

## **EXHIBIT 2**

SUBSEQUENT PAROLE CONSIDERATION HEARING  
STATE OF CALIFORNIA  
BOARD OF PRISON TERMS

In the matter of the Life  
Term Parole Consideration  
Hearing of:

CDC Number D-16017

**COPY  
INMATE**

## CALIFORNIA MEN'S COLONY

SAN LUIS OBISPO, CALIFORNIA

APRIL 27, 2005

3:38 P.M.

PANEL PRESENT:

AL ANGELE, Presiding Commissioner  
B. RODRIGUEZ, Deputy Commissioner

OTHERS PRESENT:

ISIDORO DELUNA, Inmate  
MARY ANN TARDIFF, Attorney for Inmate  
RONALD RICO, Deputy District Attorney  
JOHN MORENO, Interpreter

CORRECTIONS TO THE DECISION HAVE BEEN MADE

\_\_\_\_\_ No See Review of Hearing  
Yes Transcript Memorandum

Kristin Ledbetter

Capitol Electronic Reporting

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## PROCEEDINGS

2 PRESIDING COMMISSIONER ANGELE: This is  
3 going to be a Subsequent Parole Consideration  
4 Hearing for Isidoro DeLuna, CDC number D David  
5 16017. Today's date is April 27, 2005. The time  
6 is approximately 3:38 p.m. We're located at CMC  
7 East. This hearing is being conducted by way of  
8 video conference between CMC East and the Santa  
9 Clara County District Attorney's Office. The  
10 inmate was received October 22<sup>nd</sup>, 1985, the life  
11 term started on August 23<sup>rd</sup>, 1986, from Santa Clara  
12 County, the charge of murder in the second degree  
13 with use of a firearm, case number S as Sam C  
14 Charles L Lincoln 101944.

DEPUTY DISTRICT ATTORNEY RICO:

16 Commissioner, I'm sorry to interrupt. I'm having a  
17 difficult, I'm having a difficult time hearing you,  
18 Commissioner, over the interpreter's voice, and I'm  
19 wondering if the recording, if the recording is  
20 picking up your voice or just the interpreter's  
21 (inaudible).

22 PRESIDING COMMISSIONER ANGELE: How about  
23 now?

24 DEPUTY DISTRICT ATTORNEY RICO: That's  
25 better, and I don't know if it would be, but I  
26 don't know about the audio recording, if both you  
27 and the interpreter are talking at equal volume.

1                   **PRESIDING COMMISSIONER ANGELE:** We'll try  
2                   it.

3                   **DEPUTY DISTRICT ATTORNEY RICO:** Okay. Thank  
4                   you.

5                   **PRESIDING COMMISSIONER ANGELE:** Count number  
6                   one, 187 of the Penal Code, 12022.5 of the Penal  
7                   Code, (inaudible) 15 years to life plus two with an  
8                   MEPD of 8/17/96. Mr. DeLuna, this hearing is being  
9                   tape-recorded, and for the purpose of voice-  
10                  identification each of us state our first name and  
11                  last name, spelling our last name. When it comes  
12                  to your turn, after you spell your last name, give  
13                  us your CDC number. I'm going to go to my left,  
14                  excuse me, I'm going to go to my right. My name is  
15                  Al Angele, A-N-G-E-L-E, Commissioner, Board of  
16                  Prison Terms.

17                  **DEPUTY COMMISSIONER RODRIGUEZ:** B.  
18                  Rodriguez, R-O-D-R-I-G-U-E-Z, Associate Chief  
19                  Deputy Commissioner acting, Board of Prison Terms.

20                  **INMATE DELUNA:** My name is DeLuna.

21                  **INTERPRETER MORENO:** John Moreno,  
22                  M-O-R-E-N-O, Interpreter.

23                  **INMATE DELUNA:** My name is DeLuna. It is  
24                  I-S-I-D-O-R-O D-E-L-U-N-A, D-16017.

25                  **ATTORNEY TARDIFF:** Mary Ann Tardiff,  
26                  T-A-R-D-I double F, attorney for Mr. DeLuna.

27                  **DEPUTY DISTRICT ATTORNEY RICO:** In Santa

1       Clara County, Ronald Rico, R-I-C-O, Deputy District  
2       Attorney, Santa Clara County DA's Office by video  
3       conference. I'm the only one in the room.

4                   **PRESIDING COMMISSIONER ANGELE:** Let the  
5       record reflect that there's also a correctional  
6       officer in the room for security purposes and will  
7       not be participating in today's hearing. Mr.  
8       Moreno, would you, first let me swear you in.  
9       Raise your right hand, please. Do you solemnly or  
10      affirm that you'll translate Spanish into English  
11      and English into Spanish to the best of your  
12      ability during this hearing?

13                  **INTERPRETER MORENO:** I do.

14                  **PRESIDING COMMISSIONER ANGELE:** Thank you.  
15       Would you read that statement ADA Statement to the  
16       inmate?

17                  **INTERPRETER MORENO:** In English or in  
18       Spanish?

19                  **PRESIDING COMMISSIONER ANGELE:** In Spanish.

20                  **INTERPRETER MORENO:** In Spanish. Okay.

21                  **PRESIDING COMMISSIONER ANGELE:** Would you  
22       ask him if he understands his rights of the  
23       Americans with Disabilities Act?

24                  **INMATE DELUNA THROUGH INTERPRETER:** Some.

25                  **PRESIDING COMMISSIONER ANGELE:** All right.  
26       Would you explain to him that if he has any sort of  
27       a disability such as seeing, hearing, walking,

1 talking that we are required to provide him with an  
2 accommodation in order that he can see, talk, hear,  
3 walk. Does he understand?

4 **INMATE DELUNA THROUGH INTERPRETER:** Yeah.

5 **PRESIDING COMMISSIONER ANGELE:** He  
6 understands.

7 **INMATE DELUNA THROUGH INTERPRETER:** Yes.

8 **PRESIDING COMMISSIONER ANGELE:** Okay. Now,  
9 the record reflects that he signed BPT Form 1073,  
10 and that was on March the 14<sup>th</sup> of 2005, and that's  
11 the reasonable accommodation notice and request in  
12 accordance with the provisions in the Americans  
13 with Disabilities Act indicating that he does have  
14 a disability as defined under the ADA, and that the  
15 disability is understanding and learning the  
16 English language, reading, talking, and that he  
17 does require a Spanish interpreter, and that  
18 interpreter has been provided for him. Is that  
19 information correct, Mr. DeLuna?

20 **INMATE DELUNA THROUGH INTERPRETER:** Well, it  
21 could be that it may not be correct because you  
22 want me to speak your language, but I prefer to  
23 have it done in Spanish.

24 **PRESIDING COMMISSIONER ANGELE:** My question  
25 to him, is the statement correct that he needed a  
26 Spanish interpreter?

27 **INMATE DELUNA THROUGH INTERPRETER:** Yes,

1 Sir.

2 PRESIDING COMMISSIONER ANGELE: Okay. Now,  
3 you already said you need glasses in order to read,  
4 and you don't have those.

5 INMATE DELUNA THROUGH INTERPRETER: Yes, I  
6 do need them. I don't have them. It's been more  
7 or less about three years that I've asked for them.

8 PRESIDING COMMISSIONER ANGELE: What  
9 institution were you at when you asked for them?

10 INMATE DELUNA: In Soledad.

11 PRESIDING COMMISSIONER ANGELE: Okay. Do  
12 you -- I will make a notation that you should have  
13 some sort of glasses provided for you so you can  
14 see properly.

15 INMATE DELUNA THROUGH INTERPRETER: Very  
16 well.

17 PRESIDING COMMISSIONER ANGELE: Do you have  
18 any hearing impairments?

19 INMATE DELUNA THROUGH INTERPRETER: Yes. I  
20 can hear fine.

21 PRESIDING COMMISSIONER ANGELE: All right.  
22 Do you have any problems walking up and down stairs  
23 or for distances of 100 yards or more?

24 INMATE DELUNA THROUGH INTERPRETER: No. I  
25 don't have a problem with that.

26 PRESIDING COMMISSIONER ANGELE: Have you  
27 ever been included in Triple CMS or EOP Programs?

1                   **INMATE DELUNA THROUGH INTERPRETER:** I've  
2    been in programs.

3                   **PRESIDING COMMISSIONER ANGELE:** Does he know  
4    what Triple CMS means or EOP means?

5                   **INMATE DELUNA THROUGH INTERPRETER:** EOP for  
6    --

7                   **PRESIDING COMMISSIONER ANGELE:** Mental  
8    Health Delivery System.

9                   **INMATE DELUNA THROUGH INTERPRETER:** Yes, it  
10   has to do with illnesses.

11                  **PRESIDING COMMISSIONER ANGELE:** Has he ever  
12   been involved in the Mental Health Delivery System  
13   as a patient?

14                  **INMATE DELUNA THROUGH INTERPRETER:** Not too  
15   much but for a treatment of programs, about two or  
16   three months, about two or three months, just two  
17   or three months for the program with illnesses and  
18   so on.

19                  **PRESIDING COMMISSIONER ANGELE:** What  
20   illness? What is he talking about?

21                  **INMATE DELUNA THROUGH INTERPRETER:**  
22   Venereal.

23                  **ATTORNEY TARDIFF:** Oh, he's talking about  
24   Peer Education.

25                  **PRESIDING COMMISSIONER ANGELE:** I don't know  
26   how to get this across, so what I want him to tell  
27   me, the prison has a mental treatment facility. It

1 is the Mental Health Delivery System, Mental Health  
2 Care Delivery System, and it's referred to as  
3 Triple CMS or EOP. Has he ever been a patient in  
4 the Mental Health Service Delivery System?

5 **INMATE DELUNA THROUGH INTERPRETER:** No.

6 They haven't taken me for that.

7 **PRESIDING COMMISSIONER ANGELE:** Has he ever  
8 taken any psychotropic medication?

9 **INMATE DELUNA THROUGH INTERPRETER:**

10 Medication. I've taken plenty of medication.

11 **PRESIDING COMMISSIONER ANGELE:** Psychotropic  
12 medication.

13 **INMATE DELUNA THROUGH INTERPRETER:** No.

14 **PRESIDING COMMISSIONER ANGELE:** How far did  
15 he get in school on the outside?

16 **INMATE DELUNA THROUGH INTERPRETER:** Fourth.

17 **PRESIDING COMMISSIONER ANGELE:** Was that in  
18 Mexico or here?

19 **INMATE DELUNA THROUGH INTERPRETER:** Mexico.

20 **PRESIDING COMMISSIONER ANGELE:** Have you  
21 gone to any schooling while in prison?

22 **INMATE DELUNA THROUGH INTERPRETER:** Yes, I  
23 have gone.

24 **PRESIDING COMMISSIONER ANGELE:** Do you have  
25 any learning deficiencies or difficulties besides  
26 the language?

27 **INMATE DELUNA THROUGH INTERPRETER:**

1 Difficulties to speak it, various words that I  
2 can't get very well or understand them, but I try  
3 to do the effort for it.

4 **PRESIDING COMMISSIONER ANGELE:** Okay. Does  
5 he have any problems, educational wise, other than  
6 language barriers?

7 **INMATE DELUNA THROUGH INTERPRETER:** Part  
8 language?

9 **PRESIDING COMMISSIONER ANGELE:** Yes.

10 **INMATE DELUNA THROUGH INTERPRETER:** Well,  
11 English, that's a problem there to learn it.

12 **PRESIDING COMMISSIONER ANGELE:** Do you  
13 suffer from any disability that would prevent you  
14 from participating in today's hearing?

15 **INMATE DELUNA THROUGH INTERPRETER:** No. No.

16 **PRESIDING COMMISSIONER ANGELE:** This hearing  
17 is being conducted pursuant to Penal Code Sections  
18 3041 and 3042 and the rules and regulations of the  
19 Board of Prison Terms governing parole  
20 consideration hearings for life prisoners. The  
21 purpose of today's hearing is to consider your  
22 suitability for parole. In doing so, we're going  
23 to consider the crimes you were committed for, your  
24 prior criminal and social history, and your  
25 behavior and your programming since your  
26 commitment. We've had the opportunity to review  
27 your Central File and prior transcript, and you'll

1 have the opportunity to correct or clarify the  
2 record. Any change in parole plans should be  
3 brought to our attention. We're going to consider  
4 your progress since your last hearing, any new  
5 psychiatric reports, and any other information that  
6 may have a bearing on your suitability for parole.  
7 We're going to reach a decision today and inform  
8 you whether or not we find you suitable and the  
9 reasons for our decision. If you are found  
10 suitable, the length of your confinement will be  
11 explained to you. Now, this hearing is being  
12 conducted by Court order from the Sixth Appellate  
13 District from the California of Appeal in a  
14 disposition (inaudible) 2005 of Santa Clara County,  
15 Superior Court Number 101994, H number 027086. The  
16 instructions were to hold, to rehear and give the  
17 inmate a new hearing based upon the results of his  
18 last hearing which was March 27<sup>th</sup>, 2002. Now, the  
19 inmate does not have to discuss his offense with  
20 us, and he does not have to admit his offense;  
21 however, this Panel does accept as true the  
22 findings of the Court. Does he understand what  
23 that means?

24                   **INMATE DELUNA THROUGH INTERPRETER:** I want  
25 to understand it right.

26                   **PRESIDING COMMISSIONER ANGELE:** He wants to.

27                   **INMATE DELUNA THROUGH INTERPRETER:** I want

1 to understand it correctly.

2 **PRESIDING COMMISSIONER ANGELE:** You pled  
3 guilty in Court.

4 **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
5 Sir.

6 **PRESIDING COMMISSIONER ANGELE:** That means  
7 that we rely on the findings that he pled guilty.

8 **INMATE DELUNA THROUGH INTERPRETER:** Yes. I  
9 pleaded guilty.

10 **PRESIDING COMMISSIONER ANGELE:** All right.  
11 Now, before we recess for deliberations, the  
12 District Attorney, who is present by way of video  
13 conference, the inmate's attorney, and the inmate  
14 will have an opportunity to make a final statement  
15 regarding parole suitability and the length of  
16 confinement. Once that is done, we'll recess,  
17 clear the room, and deliberate. When we have  
18 completed our deliberations, we will resume the  
19 hearing and announce our decision. The California  
20 Code of Regulations states that a life inmate  
21 regardless of time served shall be found unsuitable  
22 for and denied parole if in the opinion of this  
23 Panel the inmate's release would pose an  
24 unreasonable risk of danger to society or a threat  
25 to public safety. Now, the inmate has certain  
26 rights. Those rights include a timely notice of  
27 this hearing, a right to review his Central File,

1 have an Olson Review, and the right to present  
2 relevant documents. Ms. Tardiff, have those rights  
3 been met so far?

4 **ATTORNEY TARDIFF:** Yes.

5 **PRESIDING COMMISSIONER ANGELE:** An  
6 additional right you have, Mr. DeLuna, is to be  
7 heard by an impartial Panel. Do you have any  
8 objections to either member of this Panel?

9 **INMATE DELUNA THROUGH INTERPRETER:** No.

10 **PRESIDING COMMISSIONER ANGELE:** Counsel?

11 **ATTORNEY TARDIFF:** No.

12 **PRESIDING COMMISSIONER ANGELE:** You will  
13 receive a copy of our written and tentative  
14 decision today. That decision becomes final within  
15 120 days. You will then receive a copy of the  
16 decision and a copy of the transcript. Are you  
17 familiar with the change in your rights to appeal  
18 Board decisions?

19 **INTERPRETER MORENO:** How did you say that?

20 **PRESIDING COMMISSIONER ANGELE:** Is he aware  
21 of his right, the change in the regulations  
22 regarding his rights to appeal Board decisions?

23 **INMATE DELUNA THROUGH INTERPRETER:** Yes.

24 **PRESIDING COMMISSIONER ANGELE:** He is aware.

25 **INMATE DELUNA THROUGH INTERPRETER:** Yes.

26 **PRESIDING COMMISSIONER ANGELE:** I want to  
27 make sure, I'd better make sure he is. Do you know

1 what a 1040 is, Form 1040?

2 INMATE DELUNA THROUGH INTERPRETER: Yes.

3 PRESIDING COMMISSIONER ANGELE: Okay. So  
4 you realize that you no longer can appeal to the  
5 Board, you appeal directly to the Courts?

6 INMATE DELUNA THROUGH INTERPRETER: Yes.

7 PRESIDING COMMISSIONER ANGELE: I may have  
8 already mentioned this to you, but you don't have  
9 to discuss your offense with us, don't have to  
10 admit your offense. And once again, this Panel  
11 does accept as true the findings of the Court. Any  
12 confidential material to be used today,  
13 Commissioner Rodriguez?

14 DEPUTY COMMISSIONER RODRIGUEZ: There will  
15 be none used in today's hearing.

16 PRESIDING COMMISSIONER ANGELE: I've passed  
17 the Hearing Checklist marked Exhibit One to the  
18 inmate's attorney to ensure that we all have the  
19 same documents. Mr. Rico, do you have the  
20 documents as listed on the Hearing Checklist?

21 DEPUTY DISTRICT ATTORNEY RICO: The lower  
22 right corner says 3/17/05 (inaudible).

23 PRESIDING COMMISSIONER ANGELE: Yes.

24 DEPUTY DISTRICT ATTORNEY RICO: I have those  
25 documents.

26 PRESIDING COMMISSIONER ANGELE: Thank you.

27 Ms. Tardiff, do you have those documents?

1                   **ATTORNEY TARDIFF:** Yes, I do.

2                   **PRESIDING COMMISSIONER ANGELE:** Any  
3 additional documents to be submitted?

4                   **ATTORNEY TARDIFF:** The interpreter has a  
5 Spanish written only letter of support, and there  
6 should be support letters in his file. If not, he  
7 has them.

8                   **PRESIDING COMMISSIONER ANGELE:** I have them  
9 here.

10                  **ATTORNEY TARDIFF:** And other than that, no.

11                  **PRESIDING COMMISSIONER ANGELE:** All right.  
12 Any preliminary objections?

13                  **ATTORNEY TARDIFF:** No.

14                  **PRESIDING COMMISSIONER ANGELE:** Will the  
15 inmate be speaking to us today?

16                  **ATTORNEY TARDIFF:** Yes.

17                  **PRESIDING COMMISSIONER ANGELE:** Okay. Mr.  
18 DeLuna, raise your right hand as best you can so I  
19 can swear you in. Do you solemnly swear or affirm  
20 that the testimony you give at today's hearing will  
21 be the truth, the whole truth, and nothing but the  
22 truth?

23                  **INMATE DELUNA THROUGH INTERPRETER:** Truth.

24                  **PRESIDING COMMISSIONER ANGELE:** If there's  
25 no objections, Ms. Tardiff, I'd like to incorporate  
26 by reference the Statement of Fact taken from the  
27 March 2005 Board report pages one and two.

1 ATTORNEY TARDIFF: No objection.

2 PRESIDING COMMISSIONER ANGELE: Mr. DeLuna,  
3 you are serving a life term for the murder of  
4 Fernando Rentorio?

5 INMATE DELUNA THROUGH INTERPRETER: Yes,  
6 Sir.

7 PRESIDING COMMISSIONER ANGELE: This  
8 occurred on or about July the 7<sup>th</sup> of 1985.

9 INMATE DELUNA THROUGH INTERPRETER: Yes,  
10 Sir.

11 PRESIDING COMMISSIONER ANGELE: And  
12 apparently, you had been at the Rosarita's  
13 Restaurant and Bar drinking.

14 INMATE DELUNA THROUGH INTERPRETER: Yes,  
15 Sir.

16 PRESIDING COMMISSIONER ANGELE: With some  
17 friends and with the victim.

18 INMATE DELUNA THROUGH INTERPRETER: Yes,  
19 Sir.

20 PRESIDING COMMISSIONER ANGELE: Did you know  
21 the victim very well?

22 INMATE DELUNA THROUGH INTERPRETER: No, Sir.

23 PRESIDING COMMISSIONER ANGELE: Not at all?

24 INMATE DELUNA THROUGH INTERPRETER: It was  
25 just something that just happened. We didn't  
26 really know each other well.

27 PRESIDING COMMISSIONER ANGELE: Did he know

1 him at all?

2 INMATE DELUNA THROUGH INTERPRETER: Oh, just  
3 there, just there.

4 PRESIDING COMMISSIONER ANGELE: Just that  
5 night?

6 INMATE DELUNA THROUGH INTERPRETER: Yes.  
7 That same place that night.

8 PRESIDING COMMISSIONER ANGELE: Apparently,  
9 you were involved in a physical altercation.

10 INMATE DELUNA THROUGH INTERPRETER: He's the  
11 one that provoked.

12 PRESIDING COMMISSIONER ANGELE: He struck  
13 you.

14 INMATE DELUNA THROUGH INTERPRETER: Yes.

15 PRESIDING COMMISSIONER ANGELE: Okay. You  
16 left the bar.

17 INMATE DELUNA THROUGH INTERPRETER: I left  
18 the bar..

19 PRESIDING COMMISSIONER ANGELE: Went home.

20 INMATE DELUNA THROUGH INTERPRETER: And I  
21 brought the rifle.

22 PRESIDING COMMISSIONER ANGELE: The rifle.  
23 Went back to the bar.

24 INMATE DELUNA THROUGH INTERPRETER: And I  
25 threw (inaudible) shots at him.

26 PRESIDING COMMISSIONER ANGELE: Why did you  
27 go back to the bar?

1                   INMATE DELUNA THROUGH INTERPRETER: Well,  
2                   the truth is that I was intoxicated.

3                   PRESIDING COMMISSIONER ANGELE: Okay.

4                   INMATE DELUNA THROUGH INTERPRETER: More, I  
5                   didn't have any other (inaudible) reaction that I  
6                   was intoxicated. That's the whole truth.

7                   PRESIDING COMMISSIONER ANGELE: Now, you  
8                   state that you threw shots at him. You fired the  
9                   rifle at him.

10                  INMATE DELUNA THROUGH INTERPRETER: Yes,  
11                  Sir.

12                  PRESIDING COMMISSIONER ANGELE: And he tried  
13                  to run off.

14                  INMATE DELUNA THROUGH INTERPRETER: Yes.

15                  PRESIDING COMMISSIONER ANGELE: You followed  
16                  him.

17                  INMATE DELUNA THROUGH INTERPRETER: Yes. I  
18                  was right there.

19                  PRESIDING COMMISSIONER ANGELE: But kind of  
20                  stalked him as he left.

21                  INMATE DELUNA THROUGH INTERPRETER: It was  
22                  right there, the same (inaudible) right around his  
23                  car.

24                  PRESIDING COMMISSIONER ANGELE: Okay.

25                  INMATE DELUNA THROUGH INTERPRETER: And I  
26                  went (inaudible), but the thing is that very many  
27                  years now, and I can't remember everything.

1                   PRESIDING COMMISSIONER ANGELE: I

2    understand. But you did shoot him.

3                   INMATE DELUNA THROUGH INTERPRETER: Yes,

4    Sir.

5                   PRESIDING COMMISSIONER ANGELE: You're  
6    responsible.

7                   INMATE DELUNA THROUGH INTERPRETER: Yes. I  
8    am responsible.

9                   PRESIDING COMMISSIONER ANGELE: I want to  
10   make sure that the record is clear that the  
11   statement the inmate makes about throwing the  
12   bullet at him means he pulled the trigger of a  
13   rifle.

14                  INMATE DELUNA THROUGH INTERPRETER: Yes,  
15    Sir. I through the bullet thrower, shot the  
16   bullets at him.

17                  PRESIDING COMMISSIONER ANGELE: The victim  
18    was shot in the face apparently.

19                  INMATE DELUNA THROUGH INTERPRETER: Yes,  
20    Sir. I hit him in the face.

21                  PRESIDING COMMISSIONER ANGELE: But he  
22    started walking across the parking lot.

23                  INMATE DELUNA THROUGH INTERPRETER: Yes,  
24    Sir.

25                  PRESIDING COMMISSIONER ANGELE: And then you  
26    shot him in the back.

27                  INMATE DELUNA THROUGH INTERPRETER: That's

1 (inaudible). As he turned around, I hit him in the  
2 back.

3 **PRESIDING COMMISSIONER ANGELE:** Hit him in  
4 the back means shot him in the back.

5 **INMATE DELUNA THROUGH INTERPRETER:** That's  
6 when he made the turn, turned around.

7 **PRESIDING COMMISSIONER ANGELE:** I understand  
8 that, but when the inmate refers to hitting him in  
9 the back, he means shot him in the back.

10 **INMATE DELUNA THROUGH INTERPRETER:** Well,  
11 when he made the turn, that's when I hit him.  
12 That's when I hit him. I'm telling you the truth.  
13 I hit him.

14 **PRESIDING COMMISSIONER ANGELE:** Okay. The  
15 word hit means by bullet fired from the rifle.

16 **INMATE DELUNA THROUGH INTERPRETER:** Yes.  
17 Yes, I hit him with a bullet.

18 **PRESIDING COMMISSIONER ANGELE:** Okay. The  
19 bullet was fired from the rifle.

20 **INMATE DELUNA THROUGH INTERPRETER:** Yes.

21 **PRESIDING COMMISSIONER ANGELE:** All right.  
22 Thank you. The reason why you got the rifle and  
23 came back was because he had slapped or hit you?

24 **INMATE DELUNA THROUGH INTERPRETER:** He had  
25 hurt me and threatened to my life and he hit me.

26 **PRESIDING COMMISSIONER ANGELE:** So you got  
27 the rifle and came back.

1                   **INMATE DELUNA THROUGH INTERPRETER:** And he  
2 told me he was going to kill me, and that's when I,  
3 that's where I was wrong, and I went and got the  
4 rifle.

5                   **PRESIDING COMMISSIONER ANGELE:** How far was  
6 your house from where the bar is?

7                   **INMATE DELUNA THROUGH INTERPRETER:** Half a  
8 mile, maybe less than half a mile, something like  
9 that.

10                  **PRESIDING COMMISSIONER ANGELE:** Is this in  
11 Morgan Hill?

12                  **INMATE DELUNA THROUGH INTERPRETER:** It's in  
13 Morgan Hill.

14                  **PRESIDING COMMISSIONER ANGELE:** You couldn't  
15 call the police?

16                  **INMATE DELUNA THROUGH INTERPRETER:** The  
17 truth is I didn't have the reaction or the capacity  
18 to do that.

19                  **PRESIDING COMMISSIONER ANGELE:** Because of  
20 intoxication.

21                  **INMATE DELUNA THROUGH INTERPRETER:** Yes.  
22 The reality is I was.

23                  **PRESIDING COMMISSIONER ANGELE:** Well, but he  
24 wasn't drunk. He wasn't so drunk that he couldn't  
25 drive a car to his house, find his rifle, load it  
26 or unload it, whatever it was, come back to the  
27 bar, and shoot at somebody and hit him a couple

1 times.

2 **INMATE DELUNA THROUGH INTERPRETER:** That's  
3 what, that's my reason. That's the truth because I  
4 didn't have the reaction (inaudible) gentleman,  
5 excuse me, please, pardon me, I've made my error.

6 **PRESIDING COMMISSIONER ANGELE:** Okay.

7 **INMATE DELUNA THROUGH INTERPRETER:** If you  
8 don't want to believe me, what can I do? I can't  
9 do anything else. I can't bring that man back.  
10 Now, I would be first to be in his place than being  
11 here with you talking.

12 **PRESIDING COMMISSIONER ANGELE:** Okay.

13 **INMATE DELUNA THROUGH INTERPRETER:**

14 Gentlemen, what can I do. If you want me to kiss  
15 your feet, I'll kiss your feet, but pardon me, I  
16 made an error. I can't do anything.

17 **PRESIDING COMMISSIONER ANGELE:** I think what  
18 we need to do first of all is not describe shooting  
19 another individual as (inaudible). My question,  
20 the question really was you're claiming you were  
21 intoxicated, but yet, you were able to go home,  
22 drive home, find the rifle, and drive back. I'm  
23 just trying to determine the level of your  
24 intoxication. Okay. Now, you have no prior  
25 arrests as a juvenile.

26 **INMATE DELUNA THROUGH INTERPRETER:** No, Sir.

27 **PRESIDING COMMISSIONER ANGELE:** You were

1 born on September 15<sup>th</sup>, 1954.

2 INMATE DELUNA THROUGH INTERPRETER: Yes,  
3 Sir.

4 PRESIDING COMMISSIONER ANGELE: One of seven  
5 children, born to Pablo DeLuna and Soledad  
6 Fernandez.

7 INMATE DELUNA THROUGH INTERPRETER: Yes,  
8 Sir.

9 PRESIDING COMMISSIONER ANGELE: And where  
10 you born, Mr. DeLuna?

11 INMATE DELUNA THROUGH INTERPRETER: In the  
12 Colonia Modelo in Zacatecas.

13 PRESIDING COMMISSIONER ANGELE: You're, at  
14 the time, a legal alien steadily employed as a  
15 field laborer until the instant offense.

16 INMATE DELUNA THROUGH INTERPRETER: I was  
17 legal.

18 PRESIDING COMMISSIONER ANGELE: I said a  
19 legal, legal alien employed as a field laborer.

20 INMATE DELUNA THROUGH INTERPRETER: Yes,  
21 Sir. I was legal.

22 PRESIDING COMMISSIONER ANGELE: In 1979, the  
23 inmate married Rosa DeLuna and has fathered two  
24 children.

25 INMATE DELUNA THROUGH INTERPRETER: Yes,  
26 Sir.

27 PRESIDING COMMISSIONER ANGELE: And they

1 were divorced.

2                   **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
3 Sir.

4                   **PRESIDING COMMISSIONER ANGELE:** The inmate  
5 is now married to Wanda Deluz DeLuna.

6                   **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
7 Sir.

8                   **PRESIDING COMMISSIONER ANGELE:** Is the  
9 marriage still intact?

10                  **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
11 Sir.

12                  **PRESIDING COMMISSIONER ANGELE:** Do you have  
13 any more than the two children?

14                  **INMATE DELUNA THROUGH INTERPRETER:** Well,  
15 there is only one, a stepson.

16                  **PRESIDING COMMISSIONER ANGELE:** But with his  
17 first wife, he has two children.

18                  **INMATE DELUNA THROUGH INTERPRETER:** The  
19 other one just had one daughter.

20                  **ATTORNEY TARDIFF:** I don't think he has any  
21 children. Do you have any children?

22                  **INMATE DELUNA THROUGH INTERPRETER:** With  
23 her, I just have stepchildren.

24                  **PRESIDING COMMISSIONER ANGELE:** Okay. I  
25 want to make sure we get this totally clear because  
26 the report says he fathered two children. Is he  
27 the biological father of any children?

1                   **INMATE DELUNA THROUGH INTERPRETER:** I am  
2 grandfather to the first children.

3                   **PRESIDING COMMISSIONER ANGELE:** Okay.

4                   **INMATE DELUNA THROUGH INTERPRETER:** That's  
5 what I was with the wife, DeLuna, Rosa DeLuna.

6                   **PRESIDING COMMISSIONER ANGELE:** In regards  
7 to substance abuse, you first started using alcohol  
8 about the age of 17.

9                   **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
10 Sir.

11                  **PRESIDING COMMISSIONER ANGELE:** Denies the  
12 use of any illicit drug.

13                  **INMATE DELUNA THROUGH INTERPRETER:** That's  
14 the truth. I have never used that.

15                  **PRESIDING COMMISSIONER ANGELE:** Okay. Drank  
16 maybe one or two beers everyday?

17                  **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
18 Sir.

19                  **PRESIDING COMMISSIONER ANGELE:** On the  
20 weekends, maybe a six-pack.

21                  **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
22 Sir.

23                  **PRESIDING COMMISSIONER ANGELE:** But  
24 apparently that on the day this happened, he  
25 consumed a very large quantity of alcohol.

26                  **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
27 Sir.

1                   PRESIDING COMMISSIONER ANGELE: Was it all  
2                   beer?

3                   INMATE DELUNA THROUGH INTERPRETER: It was  
4                   beer.

5                   PRESIDING COMMISSIONER ANGELE: Where do you  
6                   plan to live if you're released, Mr. DeLuna?

7                   INMATE DELUNA THROUGH INTERPRETER: In  
8                   Colonia Modelo in Zacatecas with my parents.

9                   PRESIDING COMMISSIONER ANGELE: He wants to  
10                  go back to Mexico.

11                  INMATE DELUNA THROUGH INTERPRETER: I'll go  
12                  back to Mexico.

13                  PRESIDING COMMISSIONER ANGELE: We do have  
14                  some letters in the file. The first one is from  
15                  Joseph Eiello, E-I-E-L-L-O.

16                  INMATE DELUNA THROUGH INTERPRETER: Yes,  
17                  Sir.

18                  PRESIDING COMMISSIONER ANGELE: He is  
19                  president of Uesugi Farms.

20                  INMATE DELUNA THROUGH INTERPRETER: Uesugi  
21                  Farms.

22                  PRESIDING COMMISSIONER ANGELE: That's  
23                  U-E-S-U-G-I, Farms. That's located in Gilroy.

24                  INMATE DELUNA THROUGH INTERPRETER: Gilroy,  
25                  yes.

26                  PRESIDING COMMISSIONER ANGELE: Writing on  
27                  behalf of the inmate. Apparently, the inmate had

1 worked for this company about six years.

2 **INMATE DELUNA THROUGH INTERPRETER:** Yes.

3 Yes, Sir.

4 **PRESIDING COMMISSIONER ANGELE:** It refers to  
5 him as a good worker.

6 **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
7 Sir.

8 **PRESIDING COMMISSIONER ANGELE:** And this is  
9 an offer for employment and also an offer for you  
10 to live on the premises in farm worker housing.  
11 The next is from is it Erma DeLuna? This is your  
12 sister-in-law?

13 **INMATE DELUNA THROUGH INTERPRETER:** That's  
14 my sister-in-law.

15 **PRESIDING COMMISSIONER ANGELE:** She resides  
16 in Minnesota.

17 **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
18 Sir.

19 **PRESIDING COMMISSIONER ANGELE:** Ready and  
20 willing and able to support you in any way she can  
21 whether that be financially, emotionally, or  
22 spiritually. It says the entire family's willing  
23 to assist you in any way necessary. This is from,  
24 apparently, your brother, Debrado DeLuna.

25 **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
26 Sir.

27 **PRESIDING COMMISSIONER ANGELE:** Who is the

1       husband of Erma.

2                    **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
3       Sir.

4                    **PRESIDING COMMISSIONER ANGELE:** The letter  
5       says the same thing, willing and able to support  
6       you in any way they can.

7                    **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
8       Sir.

9                    **PRESIDING COMMISSIONER ANGELE:** Were there  
10       any other letters?

11                  **INTERPRETER MORENO:** There's one other  
12       letter here, Sir.

13                  **PRESIDING COMMISSIONER ANGELE:** The one in  
14       Spanish?

15                  **INTERPRETER MORENO:** In Spanish.

16                  **PRESIDING COMMISSIONER ANGELE:** What is in  
17       it basically as if it is an offer of employment,  
18       offer of residence?

19                  **INTERPRETER MORENO:** No. It is not an offer  
20       of employment. It's from his present wife, Wanda  
21       DeLuna.

22                  **PRESIDING COMMISSIONER ANGELE:** All right.

23                  **INTERPRETER MORENO:** It's basically a letter  
24       of support.

25                  **PRESIDING COMMISSIONER ANGELE:** Paraphrase  
26       for us if you wouldn't mind.

27                  **INTERPRETER MORENO:** Okay. If I may, it

1 says,

2 "To whom It May Concern. My name is  
3 Wanda DeLuna. I am writing this to  
4 ask in the name of God for the, for  
5 justice, and I ask for your pardon  
6 for my husband, Isidoro DeLuna, a  
7 prisoner since 1985. Let's see,  
8 correctional in Soledad. I ask that,  
9 please, it's been a long time since  
10 the decision to grant him his  
11 liberty. He is my husband, and he  
12 deserves. He is a good person,  
13 generous, amiable, a good worker, and  
14 very responsible. I love him very  
15 much, and I need at home as a  
16 companion and his support. He needs  
17 to be with his family. He has been  
18 ill with three surgeries to this  
19 moment, and he continues under  
20 medical treatment. Please, hear me,  
21 I beg you. Permit him his liberty.  
22 I wait for you to hear me for your  
23 representation (inaudible) of  
24 justice. Sincerely (indiscernible)  
25 Wanda DeLuna."

26 **PRESIDING COMMISSIONER ANGELE:** Where does  
27 your wife, where does his wife live now?

1                   **INTERPRETER MORENO:** According to the, it's  
2   18 Buffalo (inaudible).

3                   **PRESIDING COMMISSIONER ANGELE:** What is the  
4   city?

5                   **INTERPRETER MORENO:** American Canyon,  
6   California.

7                   **PRESIDING COMMISSIONER ANGELE:** All right.  
8   The only question I have, the inmate, does he plan  
9   to go back to Mexico, and if he does, does his wife  
10   plan to go with him?

11                  **INMATE DELUNA THROUGH INTERPRETER:** She's  
12   there from that ranch, from the same ranch. That  
13   I'm sure she'll go over there.

14                  **ATTORNEY TARDIFF:** There's some other  
15   letters here apparently. Let me give you that.  
16   They're mainly --

17                  **PRESIDING COMMISSIONER ANGELE:** Thank you,  
18   counsel. This is a letter from Felizio Fernandez.  
19   It's from Minneapolis, Minnesota also. This is an  
20   uncle?

21                  **INMATE DELUNA THROUGH INTERPRETER:** That's  
22   my uncle.

23                  **PRESIDING COMMISSIONER ANGELE:** He and his  
24   wife would be willing to provide the inmate with a  
25   place to live, food, clothing, it says, until such  
26   time that he can find some fulltime employment and  
27   be self-supporting. Alberto and Rita DeLuna, this

1 is a brother.

2                   **INMATE DELUNA THROUGH INTERPRETER:** My  
3 brother.

4                   **PRESIDING COMMISSIONER ANGELE:** He's in  
5 Minnesota also. Is your whole family in Minnesota?

6                   **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
7 Sir. They're all there. Their telephone numbers  
8 are there also.

9                   **PRESIDING COMMISSIONER ANGELE:** This is a  
10 letter that said he will provide you with a place  
11 to live, food, clothing. He will assist you in  
12 finding employment.

13                   **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
14 Sir.

15                   **PRESIDING COMMISSIONER ANGELE:** This is from  
16 Tiadoro DeLuna, it's a brother.

17                   **INMATE DELUNA THROUGH INTERPRETER:** A  
18 brother.

19                   **PRESIDING COMMISSIONER ANGELE:** Takes full  
20 responsibility for your financial support. He is  
21 in Minnesota also. And Nadi DeLuna, brother.

22                   **INMATE DELUNA THROUGH INTERPRETER:** An aunt.  
23 My brother also, yes.

24                   **PRESIDING COMMISSIONER ANGELE:** He resides  
25 in Minneapolis.

26                   **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
27 Sir. He also lives there.

1                   **PRESIDING COMMISSIONER ANGELE:** Will provide  
2                    you with a place to live, food, clothing until such  
3                    time as you can find full employment. Fernando  
4                    DeLuna, a brother.

5                   **INMATE DELUNA THROUGH INTERPRETER:** My  
6                    brother.

7                   **PRESIDING COMMISSIONER ANGELE:** Minnesota.  
8                    Willing to provide you with a place to live, food,  
9                    clothing until such time as you can find full  
10                   employment, plus his wife would be responsible for  
11                   your day to day security, and even though you've  
12                   been convicted of a serious crime, certainly, you  
13                   do not represent any future threat to either his  
14                   family or the citizens of the State of Minnesota.  
15                   Mr. and Mrs. Nicholas DeLuna, this is your brother.

16                   **INMATE DELUNA THROUGH INTERPRETER:** It's my  
17                   brother, yes, Sir.

18                   **PRESIDING COMMISSIONER ANGELE:** In  
19                    Minneapolis also, and the same thing, food,  
20                   clothing, a place to live until you find full  
21                   employment. Leonardo and Maria DeLuna, it doesn't  
22                   say. This is your brother also?

23                   **INMATE DELUNA THROUGH INTERPRETER:** Who?

24                   **PRESIDING COMMISSIONER ANGELE:** Leonardo?

25                   **INMATE DELUNA THROUGH INTERPRETER:** Leonardo  
26                   is my brother also.

27                   **PRESIDING COMMISSIONER ANGELE:** They also

1 live in Minnesota.

2 INMATE DELUNA THROUGH INTERPRETER: Yes.

3 They also live there.

4 PRESIDING COMMISSIONER ANGELE: And he said  
5 that they'll provide you (inaudible) support the  
6 inmate in the United States or in Mexico.

7 INMATE DELUNA THROUGH INTERPRETER: Yes,  
8 Sir.

9 PRESIDING COMMISSIONER ANGELE: All right.  
10 This is a nephew.

11 INMATE DELUNA THROUGH INTERPRETER: He is my  
12 nephew.

13 PRESIDING COMMISSIONER ANGELE: They  
14 indicate that you'll be no problem financially in  
15 relation for them to support you. Here's a letter  
16 from Debrado.

17 INMATE DELUNA THROUGH INTERPRETER: My  
18 brother.

19 PRESIDING COMMISSIONER ANGELE: I think we  
20 already read this one maybe.

21 ATTORNEY TARDIFF: I think so.

22 PRESIDING COMMISSIONER ANGELE: Food,  
23 shelter, clothing, the inmate could be a productive  
24 member of society. These are all from the same  
25 individual. Yes. We've read this one. Okay.  
26 We've read these other ones. This is from Debrado  
27 and Erma. Anything else? Have we read all the

1 letters, covered all the letters?

2 **INMATE DELUNA THROUGH INTERPRETER:** Yes.

3 **PRESIDING COMMISSIONER ANGELE:** Most of your  
4 support seems to be in Minnesota.

5 **INMATE DELUNA THROUGH INTERPRETER:** All the  
6 family is there. Just my wife is here in  
7 California.

8 **PRESIDING COMMISSIONER ANGELE:** Is he aware  
9 that he could serve his prison sentence in  
10 Minnesota?

11 **INMATE DELUNA THROUGH INTERPRETER:** No. I  
12 would go to Mexico.

13 **PRESIDING COMMISSIONER ANGELE:** No. His  
14 prison sentence. Instead of being in prison in  
15 California, he could go to Minnesota to serve his  
16 prison sentence.

17 **INMATE DELUNA THROUGH INTERPRETER:** No. I  
18 don't think you could send me over there.

19 **PRESIDING COMMISSIONER ANGELE:** I got to get  
20 this through. We're not going to send, but he  
21 could apply if he wanted to.

22 **INMATE DELUNA THROUGH INTERPRETER:** No, Sir.

23 **PRESIDING COMMISSIONER ANGELE:** Okay.

24 **DEPUTY COMMISSIONER RODRIGUEZ:** Nobody wants  
25 to go to Minnesota.

26 **PRESIDING COMMISSIONER ANGELE:** You don't  
27 have a hold on you.

1                   **DEPUTY COMMISSIONER RODRIGUEZ:** He does have  
2 an INS Hold.

3                   **ATTORNEY TARDIFF:** Yeah. He has one.

4                   **PRESIDING COMMISSIONER ANGELE:** I don't  
5 think I saw one.

6                   **INMATE DELUNA THROUGH INTERPRETER:** I think  
7 I do have one.

8                   **DEPUTY COMMISSIONER RODRIGUEZ:** He does. I  
9 verified it.

10                  **PRESIDING COMMISSIONER ANGELE:** Well, in  
11 that case, you probably will be going back to  
12 Mexico.

13                  **INMATE DELUNA THROUGH INTERPRETER:** Yes.  
14 I'll go to Mexico.

15                  **ATTORNEY TARDIFF:** But what he means is if  
16 you wanted to be closer to your family, you could  
17 go to Minnesota in the meantime and serve your time  
18 there.

19                  **INMATE DELUNA THROUGH INTERPRETER:** No..

20                  **PRESIDING COMMISSIONER ANGELE:** Okay. All  
21 right. We sent out what we call 3042 Notices, and  
22 those are notices that go out to agencies that have  
23 a direct interest in your case such as police  
24 department, sheriff department, District Attorney,  
25 Judge, things of that nature. I have not received  
26 any replies; however, there is a representative  
27 here today present via video conference from the

1 Santa Clara County District Attorney's Office, who,  
2 I'm sure, will make a statement regarding parole  
3 suitability prior to the conclusion of this  
4 hearing. And with that, we'll go to post-  
5 conviction factors, please, Commissioner Rodriguez.

6 **DEPUTY COMMISSIONER RODRIGUEZ:** Okay. Good  
7 afternoon, Mr. DeLuna.

8 **INMATE DELUNA THROUGH INTERPRETER:** Good  
9 afternoon.

10 **DEPUTY COMMISSIONER RODRIGUEZ:** During this  
11 portion of the hearing, I'll be addressing what  
12 you've done since your last Board appearance which  
13 will then bring us to the present. If there's  
14 anything that I, excuse me. In preparation for  
15 this I've reviewed your Central File. If there's  
16 anything out, if there's anything that I leave out  
17 during this reading, either you or your attorney  
18 can address it. Okay. Your last Board appearance  
19 was held at Soledad State Prison on March 27, 2002.  
20 You were given a three-year denial, and the Board  
21 recommended remain disciplinary-free, upgrade  
22 vocationally and educationally.

23 **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
24 Sir.

25 **DEPUTY COMMISSIONER RODRIGUEZ:** All right.  
26 He doesn't have to answer yet.

27 **INMATE DELUNA THROUGH INTERPRETER:** Excuse

1 me.

2 **DEPUTY COMMISSIONER RODRIGUEZ:** And to  
3 participate in self-help and therapy. He  
4 transferred here to California Men's Colony East  
5 Facility on May 20<sup>th</sup>, 2004, due to a need for  
6 medical surgery, and he's currently here due to  
7 some outstanding appointments, medical  
8 appointments, and will eventually return back to  
9 Soledad. So therefore, he's currently medically  
10 unassigned. His current placement score is 19  
11 points consistent with a Level Two inmate, and 19  
12 points is the lowest points a life inmate can get.  
13 He's currently in Level Three institution on a  
14 medical override. One moment, please... I'm turning  
15 the tapes over.

16 [Thereupon, the tape was turned over.]

17 **DEPUTY COMMISSIONER RODRIGUEZ:** Side two,  
18 we're back on record. Mr. DeLuna, you have an  
19 active Immigration Hold. Your current custody is  
20 Medium A. As I stated, you're currently medically  
21 unassigned. Your previous employment, or your  
22 previous position was a porter with average  
23 reports, work reports. You have attended some ESL,  
24 English as a Second Language classes. You have not  
25 received your GED. You have not received a  
26 vocation yet, but you have received two  
27 certificates of achievement for vocational

1 landscape and have satisfactory work performance.  
2 You have, you have completed the Impact Program.  
3 That's in July of 2000. You have attended AA,  
4 Alcoholics Anonymous. Mr. DeLuna, do you attend  
5 any classes here at CMC?

6 **INMATE DELUNA THROUGH INTERPRETER:** I have  
7 one, and I attended, and the other one I didn't  
8 attend.

9 **DEPUTY COMMISSIONER RODRIGUEZ:** Okay. You  
10 have attended Personal Growth Seminars and  
11 completed a 44-week course. You also have attended  
12 a self-esteem program. In reviewing a chrono in  
13 your file dated January 29<sup>th</sup>, 2003, this is from  
14 Soledad, it says you continue to voluntarily  
15 participate in Project Change.

16 **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
17 Sir.

18 **DEPUTY COMMISSIONER RODRIGUEZ:** And this is  
19 the 44-week course I addressed. It deals with  
20 self-esteem, assertiveness, goal setting, Anger  
21 Management, coping skills, stress reduction and  
22 tolerance, parenting, domestic violence, and life  
23 skills, and you're to be commended for that. You  
24 have never received any serious or administrative  
25 CDC 115s. You have received --

26 **INMATE DELUNA THROUGH INTERPRETER:** No, Sir.  
27 I've received that.

1                   ATTORNEY TARDIFF: He said that.

2                   DEPUTY COMMISSIONER RODRIGUEZ: Right. But  
3                   you have received two counseling chronos, and the  
4                   last one was in April 25<sup>th</sup>, 2004, for delaying  
5                   lockup.

6                   INMATE DELUNA THROUGH INTERPRETER: Yes,  
7                   Sir.

8                   DEPUTY COMMISSIONER RODRIGUEZ: Okay. Does  
9                   everything I've read appear correct to you?

10                  INMATE DELUNA THROUGH INTERPRETER: Well,  
11                  for me, it's correct.

12                  DEPUTY COMMISSIONER RODRIGUEZ: Okay.

13                  INMATE DELUNA THROUGH INTERPRETER: It's  
14                  just the 128s, it could be that I may not be  
15                  correct. May I explain to you?

16                  DEPUTY COMMISSIONER RODRIGUEZ: Okay. Yes.  
17                  In fact, it's, here's two of them. Okay. One you  
18                  received for in May 2<sup>nd</sup>, 1998, for grooming  
19                  standards. It must have been your mustache.  
20                  Right? Okay. And then the last one I just read is  
21                  for delaying lockup.

22                  INMATE DELUNA THROUGH INTERPRETER: Okay.  
23                  May I think about that one?

24                  DEPUTY COMMISSIONER RODRIGUEZ: Yes. Go  
25                  ahead.

26                  INMATE DELUNA THROUGH INTERPRETER: On the  
27                  28<sup>th</sup> they gave it to me, when they sent us to eat,

1 and the program is (inaudible) I went to have my  
2 hair cut, from there I returned to the unit,  
3 (inaudible) when they were getting ready to close  
4 the door, and they gave me that, but I didn't have  
5 much, put much importance to that 128.

6 **DEPUTY COMMISSIONER RODRIGUEZ:** It's still  
7 an infraction. It's not serious, but it basically  
8 he was a little bit late. Okay.

9 **INMATE DELUNA THROUGH INTERPRETER:** Okay.

10 **DEPUTY COMMISSIONER RODRIGUEZ:** I'm going to  
11 the psych report, and this is a four-page report.  
12 I'm not going to read the report in its entirety.  
13 It is authored by Eric Rueschenberg,  
14 R-U-E-S-C-H-E-N-B-E-R-G, Clinical Psychologist.  
15 The date of this report is, the interview was  
16 conducted on 7/27/2001, utilizing a Spanish  
17 interpreter, and it as I stated, it was completed  
18 here at California Men's Colony East Facility.

19 **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
20 Sir.

21 **DEPUTY COMMISSIONER RODRIGUEZ:** Going to  
22 page two under substance abuse history, Mr. DeLuna  
23 reported that he first started using alcohol at the  
24 age of 17. He denied any use of illicit drugs.  
25 Initially, he informed the examiner that he  
26 consumed approximately one or two beers everyday  
27 and perhaps a six-pack on weekends. However, as

1 the interview progressed, it became apparent that  
2 his use of alcohol was likely more extensive. It  
3 appears that on the day of the index offense, he  
4 consumed a large quantity of alcohol. Currently,  
5 Mr. DeLuna denies having a problem with alcohol.  
6 Under clinical assessment, he, which is Mr. DeLuna,  
7 was alert and well oriented in the three spheres.  
8 His speech was heavily accented, but he was able to  
9 communicate effectively with the assistance of an  
10 interpreter. Under diagnostic impressions, Axis I,  
11 Alcohol Dependence in Full Remission in a  
12 Controlled Setting, Adult Antisocial Behavior; Axis  
13 II, Deferred; Axis III, Recent Surgery on Hernia;  
14 Axis IV, Incarceration; Axis V, Global Assessment  
15 of Functioning, it's 73. I don't recall if  
16 Commissioner Angele asked him, is he discussing the  
17 case or not?

18 **ATTORNEY TARDIFF:** He is.

19 **DEPUTY COMMISSIONER RODRIGUEZ:** Okay. I  
20 just had a quick question. Under criminal history,  
21 it says allegedly he got up walked around, which is  
22 the victim, to the other side of the car and began  
23 yelling at Mr. DeLuna, go ahead and kill me.  
24 Another shot was fired striking the victim in the  
25 face, and the victim continued to walk around his  
26 car spitting blood and fragments of teeth. Mr.  
27 DeLuna, you had already shot him. After he was hit

1 and walking around toward you, why did you shoot  
2 him again in the face when he was helpless?

3 **INMATE DELUNA THROUGH INTERPRETER:** Well,  
4 Sir, the truth is that I was blind because of the  
5 alcohol. The alcohol now is --

6 **DEPUTY COMMISSIONER RODRIGUEZ:** Are you an  
7 alcoholic?

8 **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
9 Sir. I'm a drunk.

10 **DEPUTY COMMISSIONER RODRIGUEZ:** Fourth  
11 paragraph, in the present interview, Mr. DeLuna  
12 acknowledged full responsibility of shooting and  
13 killing the victim. Mr. DeLuna had previously  
14 reported that he had limited recollection of the  
15 offense since he was heavily inebriated when the  
16 crime occurred. Does he recall shooting the victim  
17 when he walked across a stack of wooden boxes?

18 **INMATE DELUNA THROUGH INTERPRETER:** Parts  
19 that I don't remember very well.

20 **DEPUTY COMMISSIONER RODRIGUEZ:** Okay. But  
21 you remember shooting him?

22 **INMATE DELUNA THROUGH INTERPRETER:** I know I  
23 did the bad thing.

24 **DEPUTY COMMISSIONER RODRIGUEZ:** Okay. Did  
25 he, the victim, did he (inaudible) buy the victim a  
26 beer earlier in the club?

27 **INMATE DELUNA THROUGH INTERPRETER:** I

1 invited him to a beer.

2 **DEPUTY COMMISSIONER RODRIGUEZ:** Okay.

3 **INMATE DELUNA THROUGH INTERPRETER:** I

4 invited him to but he didn't want it.

5 **DEPUTY COMMISSIONER RODRIGUEZ:** Okay. And  
6 the reason I'm saying, he stated here that he  
7 reported that he and his brother and a friend  
8 decided to leave the restaurant. No. Excuse me.  
9 I'm sorry. That he ordered, excuse me, Mr. DeLuna  
10 ordered four beers for the four individuals sitting  
11 at the other table.

12 **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
13 Sir.

14 **DEPUTY COMMISSIONER RODRIGUEZ:** Was the  
15 victim one of the four individuals?

16 **INMATE DELUNA THROUGH INTERPRETER:** Yes.  
17 Yes, he was one.

18 **DEPUTY COMMISSIONER RODRIGUEZ:** Thank you.  
19 The next page it says, Mr. DeLuna acknowledged that  
20 he never saw the victim with a firearm. When  
21 questioned about why he continued to shoot the  
22 victim who was no longer posing a threat to him,  
23 his only response was I was feeling scared. He  
24 expressed remorse for the offense. Under risk for  
25 violence, it should be noted that since Mr. DeLuna  
26 is from a different cultural background, these  
27 instruments have questionable validity. On all

1 three measures Mr. DeLuna scored well within the  
2 low range of severity; however, as mentioned above,  
3 these results need to be interpreted cautiously  
4 since these instruments have questionable validity  
5 for individuals from different cultures.

6 Conclusion, overall, Mr. DeLuna appears to have a  
7 low level of risk for future violence in the  
8 community. The index offense seems to be an  
9 isolated incident related to tense situational  
10 factors and the disinhibiting effects of alcohol  
11 intoxication. However, it should be noted that Mr.  
12 DeLuna appears to have had a more serious problem  
13 with alcohol than he is acknowledging. And I do  
14 want to say, this report was written in 2001.  
15 Today, Mr. DeLuna admits that he is an alcoholic  
16 and a drunk; is that correct?

17 **INMATE DELUNA:** That is correct.

18 **INTERPRETER MORENO:** That's correct.

19 **DEPUTY COMMISSIONER RODRIGUEZ:** If Mr.  
20 DeLuna is to remain in prison, it is recommended  
21 that he continue to remain disciplinary-free and  
22 that he improve his English skills and that he  
23 participate in Alcoholics Anonymous. At this time,  
24 I return it to the Chair.

25 **PRESIDING COMMISSIONER ANGELE:** Thank you.

26 Mr. DeLuna, have you had anything to drink since  
27 you've come to prison?

1                   INMATE DELUNA THROUGH INTERPRETER: No, Sir.

2                   PRESIDING COMMISSIONER ANGELE: Any

3                   questions, Commissioner Rodriguez?

4                   DEPUTY COMMISSIONER RODRIGUEZ: No further  
5                   questions.

6                   PRESIDING COMMISSIONER ANGELE: Any  
7                   questions from the District Attorney?

8                   DEPUTY DISTRICT ATTORNEY RICO: Yes.

9                   Commissioner, and for Mr. DeLuna's benefit I'll  
10                  address them to the Chair. On the day of the life  
11                  crime, had Mr. DeLuna been drinking before he went  
12                  to Rosarita's Restaurant Bar?

13                  INMATE DELUNA THROUGH INTERPRETER: Yes,  
14                  Sir.

15                  DEPUTY DISTRICT ATTORNEY RICO: Could he  
16                  explain a little bit about that?

17                  INMATE DELUNA THROUGH INTERPRETER: Since  
18                  12:00 p.m. or 1:00 p.m. more or less.

19                  PRESIDING COMMISSIONER ANGELE: Where had he  
20                  been drinking?

21                  INMATE DELUNA THROUGH INTERPRETER: I was  
22                  working, gentlemen.

23                  PRESIDING COMMISSIONER ANGELE: Was this  
24                  during the day?

25                  INMATE DELUNA THROUGH INTERPRETER: Yes,  
26                  that was during the day that I was drinking  
27                  working.

1                   **PRESIDING COMMISSIONER ANGELE:** Afternoon or  
2 morning?

3                   **INMATE DELUNA THROUGH INTERPRETER:** In the  
4 morning.

5                   **PRESIDING COMMISSIONER ANGELE:** In the  
6 morning.

7                   **INMATE DELUNA THROUGH INTERPRETER:** In the  
8 morning.

9                   **DEPUTY DISTRICT ATTORNEY RICO:** And that was  
10 at work he was drinking?

11                  **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
12 Sir. I was drinking because the day was hot.

13                  **DEPUTY DISTRICT ATTORNEY RICO:** Okay. And  
14 drinking alcohol?

15                  **INMATE DELUNA THROUGH INTERPRETER:** A little  
16 (inaudible) that's what it was. We were drinking  
17 beer. Yes, Sir.

18                  **DEPUTY DISTRICT ATTORNEY RICO:** And after  
19 work, did Mr. DeLuna continue drinking before going  
20 to Rosarita's Bar?

21                  **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
22 Sir, I continued.

23                  **DEPUTY DISTRICT ATTORNEY RICO:** Where was  
24 that?

25                  **INMATE DELUNA THROUGH INTERPRETER:** I bought  
26 it at the liquor store, and I was drinking it in my  
27 house.

1                   DEPUTY DISTRICT ATTORNEY RICO: And was he  
2 alone, or was somebody (inaudible)?

3                   INMATE DELUNA THROUGH INTERPRETER: No. I  
4 had company.

5                   DEPUTY DISTRICT ATTORNEY RICO: And why is  
6 it that Mr. DeLuna decided to leave home where he  
7 had been drinking and go out to the bar?

8                   INMATE DELUNA THROUGH INTERPRETER: Sir,  
9 because when I went to the bar, I had gone out to  
10 buy some shoes at the flea market.

11                  DEPUTY DISTRICT ATTORNEY RICO: Did Mr.  
12 DeLuna drink at the flea market?

13                  INMATE DELUNA THROUGH INTERPRETER: Yes,  
14 Sir. I drank there.

15                  DEPUTY DISTRICT ATTORNEY RICO: And who was  
16 he at the flea market with?

17                  INMATE DELUNA THROUGH INTERPRETER: With a  
18 friend.

19                  DEPUTY DISTRICT ATTORNEY RICO: And was it  
20 after the flea market that he went to Rosarita's?

21                  INMATE DELUNA THROUGH INTERPRETER: It was a  
22 brother of mine with me.

23                  DEPUTY DISTRICT ATTORNEY RICO: I guess I  
24 didn't quite understand that. What was that?

25                  INMATE DELUNA THROUGH INTERPRETER: At the  
26 flea market, we were drinking with a friend and my  
27 brother.

1                   **DEPUTY DISTRICT ATTORNEY RICO:** Okay. And  
2                   which brother was that?

3                   **INMATE DELUNA THROUGH INTERPRETER:** My  
4                   brother, Marrelcio.

5                   **DEPUTY DISTRICT ATTORNEY RICO:** Okay. And  
6                   then at some point, Mr. DeLuna and his friend and  
7                   his brother, Marrelcio went to Rosarita's; is that  
8                   correct?

9                   **INMATE DELUNA THROUGH INTERPRETER:** One went  
10                  to his house and my brother and I went to the  
11                  restaurant, Rosarita's.

12                  **DEPUTY DISTRICT ATTORNEY RICO:** Okay. And  
13                  then the drinking continued at Rosarita's?

14                  **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
15                  Sir.

16                  **DEPUTY DISTRICT ATTORNEY RICO:** Okay. And  
17                  that's when this incident came, well, let me ask  
18                  this. The problem with the victim and his friends,  
19                  did it come up over Mr. DeLuna being intoxicated  
20                  and drinking and singing in a loud voice?

21                  **INMATE DELUNA THROUGH INTERPRETER:**  
22                  Gentleman, sir, I was drinking. I was eating some  
23                  tortillas, and (inaudible) got there started, you  
24                  know, threatening me at my back.

25                  **DEPUTY DISTRICT ATTORNEY RICO:** Okay. Did  
26                  they complain about Mr. DeLuna's singing n the bar?

27                  **INMATE DELUNA THROUGH INTERPRETER:** The

1 gentleman was the one who complained about it. I  
2 wasn't singing. I went there to, I went there to  
3 play the piano.

4 **DEPUTY DISTRICT ATTORNEY RICO:** Okay.

5 Anyway, how did Mr. DeLuna get from the flea market  
6 to the bar?

7 **INMATE DELUNA THROUGH INTERPRETER:** Well,  
8 they're close.

9 **DEPUTY DISTRICT ATTORNEY RICO:** Did he walk  
10 or drive?

11 **INMATE DELUNA THROUGH INTERPRETER:** No. We  
12 drove, drove.

13 **DEPUTY DISTRICT ATTORNEY RICO:** And when you  
14 say, we drove, who drove?

15 **INMATE DELUNA THROUGH INTERPRETER:** I drove  
16 myself.

17 **DEPUTY DISTRICT ATTORNEY RICO:** Okay. But  
18 his brother Marrello was in the car?

19 **INMATE DELUNA THROUGH INTERPRETER:** He was  
20 with me, but he was in the restaurant.

21 **DEPUTY DISTRICT ATTORNEY RICO:** Okay. So  
22 after there was this disagreement with the victim  
23 and his friends, did Mr. DeLuna go out to his car  
24 and drive home?

25 **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
26 Sir.

27 **DEPUTY DISTRICT ATTORNEY RICO:** Okay. And

1 what about his brother?

2           INMATE DELUNA THROUGH INTERPRETER: My  
3 brother stayed at home.

4           DEPUTY DISTRICT ATTORNEY RICO: I don't  
5 quite understand. Let me re-ask it so there's no  
6 confusion. Mr. DeLuna and his brother were at the  
7 bar, and then I assume Mr. DeLuna drove his brother  
8 back to the house?

9           INMATE DELUNA THROUGH INTERPRETER: Yes,  
10 Sir.

11           DEPUTY DISTRICT ATTORNEY RICO: Okay. Now,  
12 I note in one of these reports, in the psych report  
13 at page four, it says something about Mr. DeLuna  
14 had a rifle in the car; is that right?

15           INMATE DELUNA THROUGH INTERPRETER: Yes,  
16 Sir.

17           DEPUTY DISTRICT ATTORNEY RICO: Was the  
18 rifle obtained at the house or was it already in  
19 the car?

20           INMATE DELUNA THROUGH INTERPRETER: It was  
21 in the car.

22           DEPUTY DISTRICT ATTORNEY RICO: Okay. So  
23 why go home?

24           INMATE DELUNA THROUGH INTERPRETER: Because  
25 I had that car. I had a heavy truck with me.

26           DEPUTY DISTRICT ATTORNEY RICO: You were at  
27 the bar in the truck.

1                   **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
2                   Sir.

3                   **DEPUTY DISTRICT ATTORNEY RICO:** Okay. So  
4                   you drove the truck with your brother in it home.

5                   **INMATE DELUNA THROUGH INTERPRETER:** Yeah.

6                   **DEPUTY DISTRICT ATTORNEY RICO:** And it was  
7                   at home that you had a car with a rifle in it.

8                   **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
9                   Sir. Yes, Sir.

10                  **DEPUTY DISTRICT ATTORNEY RICO:** Why did you  
11                  have a rifle in your car?

12                  **INMATE DELUNA THROUGH INTERPRETER:** Well,  
13                  the reality is that it was for protection at home,  
14                  but I never thought that it was going to get to  
15                  this to (inaudible) at home. I had never had that  
16                  in my mind. The truth is is that I was a very  
17                  innocent person in that form.

18                  **DEPUTY DISTRICT ATTORNEY RICO:** But I don't  
19                  quite understand. Why keep the rifle in the car?

20                  **INMATE DELUNA THROUGH INTERPRETER:** I had it  
21                  there because I worked, and I would take it to  
22                  scare the birds when the napa is growing. They  
23                  have a picture here of the lettuce that it gives in  
24                  the letter.

25                  **DEPUTY DISTRICT ATTORNEY RICO:** I guess I  
26                  don't quite understand. The rifle was kept in the  
27                  car to scare to some birds?

1                   **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
2                   Sir. To scare the birds, scare the little animals.

3                   **DEPUTY DISTRICT ATTORNEY RICO:** Okay. The  
4 reports indicate that there were two weapons used,  
5 a rifle and a shotgun. Can you tell us about that?

6                   **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
7                   Sir. I'm not lying. I'm telling you the truth.  
8 There were there.

9                   **DEPUTY DISTRICT ATTORNEY RICO:** No. But I  
10 mean, how did the shotgun get involved in this  
11 (inaudible)?

12                  **INMATE DELUNA THROUGH INTERPRETER:** Well, I  
13 had it there also in the car because I used the  
14 car.

15                  **DEPUTY DISTRICT ATTORNEY RICO:** But was  
16 there both a rifle and a shotgun in the car?

17                  **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
18 Sir. There was a (inaudible) and a .22 because I  
19 used, for a few days I used the car, and there I  
20 left the firearms.

21                  **DEPUTY DISTRICT ATTORNEY RICO:** Okay. Okay.  
22 And why, if Mr. DeLuna had the problem with the  
23 victim and his friends at the bar, why did he go  
24 home to bring back two firearms to the bar? What  
25 was his intention?

26                  **INMATE DELUNA THROUGH INTERPRETER:** That is  
27 one of the things I would like to understand. It's

1 a very big question, and I can't understand it, why  
2 I had the firearms.

3 **PRESIDING COMMISSIONER ANGELE:** He was at  
4 the bar with his brother in a company truck.

5 **INMATE DELUNA THROUGH INTERPRETER:** Yes.

6 **PRESIDING COMMISSIONER ANGELE:** He drove his  
7 brother home in the company truck.

8 **INMATE DELUNA THROUGH INTERPRETER:** Uh-huh.

9 **PRESIDING COMMISSIONER ANGELE:** Okay. He  
10 changed into his own car.

11 **INMATE DELUNA THROUGH INTERPRETER:** I have  
12 two beers in my truck, the beers. I got the car  
13 and I came.

14 **PRESIDING COMMISSIONER ANGELE:** Why did he  
15 go back to the bar with two weapons? What was his  
16 reason why?

17 **INMATE DELUNA THROUGH INTERPRETER:** The  
18 reason was just to drink. That was all.

19 **ATTORNEY TARDIFF:** No. Why did you have the  
20 rifles with you when you went back to the bar?

21 **INMATE DELUNA THROUGH INTERPRETER:** The  
22 rifles were already there in the car.

23 **PRESIDING COMMISSIONER ANGELE:** Okay. Where  
24 in the car were they?

25 **INMATE DELUNA THROUGH INTERPRETER:** Right  
26 here.

27 **DEPUTY DISTRICT ATTORNEY RICO:** Mr. DeLuna,

1 reports indicate that when Mr. DeLuna drove back to  
2 the bar, he didn't go in to drink, that he waited  
3 outside for the victim. Why did he do that?

4 **INMATE DELUNA THROUGH INTERPRETER:** No. I  
5 was going in when I got there. (inaudible) there  
6 at the door, and that's when we started talking  
7 again and arguing, talking bad, and that's when we  
8 got into it, and that's what happened, what  
9 happened was in the parking lot.

10 **DEPUTY DISTRICT ATTORNEY RICO:** So did Mr.  
11 DeLuna have the rifle with him as he started to  
12 walk back to the bar?

13 **INMATE DELUNA THROUGH INTERPRETER:** No. No.  
14 No. That was there outside.

15 **DEPUTY DISTRICT ATTORNEY RICO:** So there was  
16 some other incident between Mr. DeLuna and the  
17 victim outside after he returned to the bar before  
18 he shot the victim?

19 **INMATE DELUNA THROUGH INTERPRETER:** I didn't  
20 understand that.

21 **DEPUTY DISTRICT ATTORNEY RICO:** Sure. I  
22 guess I'm a little bit confused here. He indicates  
23 that he went home, switched vehicles, and drove  
24 back to the bar to drink; is that right?

25 **INMATE DELUNA THROUGH INTERPRETER:** That's  
26 correct because I went and got it.

27 **DEPUTY DISTRICT ATTORNEY RICO:** Okay. And

1 as he was going into the bar, he met the victim  
2 outside.

3 **INMATE DELUNA THROUGH INTERPRETER:** Outside.

4 **DEPUTY DISTRICT ATTORNEY RICO:** And then  
5 what happened?

6 **INMATE DELUNA THROUGH INTERPRETER:** That's  
7 where it happened?

8 **DEPUTY DISTRICT ATTORNEY RICO:** What  
9 happened?

10 **INMATE DELUNA THROUGH INTERPRETER:** We  
11 started to talking again, you know, bad about  
12 fighting, and me too.

13 **DEPUTY DISTRICT ATTORNEY RICO:** So how did  
14 Mr. DeLuna wind up with a rifle and shooting the  
15 victim?

16 **INMATE DELUNA THROUGH INTERPRETER:** Because  
17 he also threatened to kill me, and that's when it  
18 started.

19 **DEPUTY DISTRICT ATTORNEY RICO:** But when did  
20 Mr. DeLuna get the rifle?

21 **INMATE DELUNA THROUGH INTERPRETER:** Well, at  
22 that moment, the rifle, that we started to, you  
23 know, talking bad to each other.

24 **ATTORNEY TARDIFF:** Well, did he follow you  
25 to your car when you left the bar?

26 **INMATE DELUNA THROUGH INTERPRETER:**  
27 (inaudible) come on there's my car. Come on.

1                   **DEPUTY DISTRICT ATTORNEY RICO:** I'm not  
2                   trying to prolong this, but let me see if I can ask  
3                   it this way. The probation report says that the  
4                   defendant and his brother and friend left the bar  
5                   and after awhile, so did the victim and his  
6                   friends, and the victim was about to enter his  
7                   vehicle when the defendant, driving a white car  
8                   with a passenger inside, circled the victim; is  
9                   that right?

10                  **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
11                  Sir.

12                  **DEPUTY DISTRICT ATTORNEY RICO:** So Mr.  
13                  DeLuna was in his car circling the victim who was  
14                  on foot when Mr. DeLuna started firing the rifle;  
15                  is that right?

16                  **INMATE DELUNA THROUGH INTERPRETER:** Yes.  
17                  Because he had already threatened me.

18                  **DEPUTY DISTRICT ATTORNEY RICO:** Okay. And  
19                  the report indicates that the victim was shot first  
20                  in the elbow; is that right?

21                  **INMATE DELUNA THROUGH INTERPRETER:** Yes,  
22                  Sir.

23                  **DEPUTY DISTRICT ATTORNEY RICO:** And then  
24                  after that, Mr. DeLuna fired another shot and shot  
25                  the victim in the mouth; is that right?

26                  **INMATE DELUNA THROUGH INTERPRETER:** Yes.

27                  **DEPUTY DISTRICT ATTORNEY RICO:** And there

1 was another shot that was fired to the rifle that  
2 apparently hit a gas pump; is that right?

3 INMATE DELUNA THROUGH INTERPRETER: Yes,  
4 Sir.

5 DEPUTY DISTRICT ATTORNEY RICO: Okay. And  
6 someone else in the car was shooting a shotgun at  
7 the time, right?

8 INMATE DELUNA THROUGH INTERPRETER: Yes,  
9 Sir.

10 DEPUTY DISTRICT ATTORNEY RICO: And who was  
11 that?

12 INMATE DELUNA THROUGH INTERPRETER: That was  
13 shooting at? I was the one that had the .12.

14 DEPUTY DISTRICT ATTORNEY RICO: I'm sorry?

15 INMATE DELUNA THROUGH INTERPRETER: I had  
16 the .12.

17 DEPUTY DISTRICT ATTORNEY RICO: Had the  
18 what?

19 ATTORNEY TARDIFF: The .12 gauge.

20 INTERPRETER MORENO: The .12 gauge shotgun.

21 DEPUTY DISTRICT ATTORNEY RICO: Okay. The  
22 victim was shot with the rifle, right?

23 INMATE DELUNA THROUGH INTERPRETER: Uh-huh.  
24 Yes, Sir.

25 DEPUTY DISTRICT ATTORNEY RICO: Well, who  
26 was firing the rifle?

27 INMATE DELUNA THROUGH INTERPRETER: I had

1 already shot with the rifle.

2 PRESIDING COMMISSIONER ANGELE: Mr. Rico,  
3 we're getting nowhere fast.

4 DEPUTY DISTRICT ATTORNEY RICO: Okay.

5 (Inaudible.)

6 PRESIDING COMMISSIONER ANGELE: I think it's  
7 probably obvious we have an individual admitting  
8 total responsibility.

9 DEPUTY DISTRICT ATTORNEY RICO: Okay. I  
10 understand. Let me ask it this way. The only  
11 point, the issue, and let me just ask this one.  
12 Was Mr. DeLuna's brother in the car with him at the  
13 time this took place?

14 INMATE DELUNA THROUGH INTERPRETER: Yes,  
15 Sir.

16 PRESIDING COMMISSIONER ANGELE: Time out.  
17 Was he in the car with you when you shot the  
18 victim?

19 INMATE DELUNA THROUGH INTERPRETER: Yes,  
20 when I shot.

21 PRESIDING COMMISSIONER ANGELE: Okay.

22 DEPUTY DISTRICT ATTORNEY RICO: And is this  
23 the same brother that your parole plans include  
24 going back to stay with?

25 INMATE DELUNA THROUGH INTERPRETER: No, Sir.

26 DEPUTY DISTRICT ATTORNEY RICO: Okay. I  
27 think Mr. DeLuna has referred to this shooting

1 before as, well, he referred to it today as an  
2 error, and he's referred to it before as an  
3 accident. Does he still maintain that?

4 **INMATE DELUNA THROUGH INTERPRETER:** No, Sir.

5 What I think is that it's because of ignorance.

6 **DEPUTY DISTRICT ATTORNEY RICO:** Okay. The  
7 last area I just wanted to ask about. In the  
8 probation report it also refers to a woman who had  
9 picked up her daughter and her daughter's friend  
10 and was driving nearby at the time of this  
11 incident, and she identified as the defendant, she  
12 identified the defendant driving by in his vehicle  
13 and a second person in the car handed him the rifle  
14 and then the defendant fired a shot at them. Why  
15 did he do that?

16 **INMATE DELUNA THROUGH INTERPRETER:**

17 (inaudible) the victim. That's why I shot. I  
18 didn't know it was a lady. If you want to believe  
19 it, believe me, but I thought it was the other one.  
20 That's why I shot at her. That's when I found out  
21 that it was a lady. (inaudible) if you want to  
22 believe me, believe me. I can't do anything about  
23 it.

24 **DEPUTY DISTRICT ATTORNEY RICO:** Now, just so  
25 I understand. Is Mr. DeLuna saying that he did  
26 fire a shot at a vehicle?

27 **INMATE DELUNA THROUGH INTERPRETER:** Yes,

1 Sir. Yes. I hit a vehicle.

2 DEPUTY DISTRICT ATTORNEY RICO: Okay. And  
3 why was that?

4 INMATE DELUNA THROUGH INTERPRETER: Because

5 --

6 PRESIDING COMMISSIONER ANGELE: He's already  
7 answered the question, Mr. Rico. He said because  
8 he thought it was another party who was with the  
9 victim he shot. Maybe you can't hear that.

10 DEPUTY DISTRICT ATTORNEY RICO: It was a  
11 little difficult with both the interpreter and him  
12 talking at the same time.

13 PRESIDING COMMISSIONER ANGELE: Mr. Moreno,  
14 when you interpret for him, let him stop because I  
15 can understand it gets a little --

16 INTERPRETER MORENO: Okay.

17 PRESIDING COMMISSIONER ANGELE: Because I  
18 can hardly hear him.

19 DEPUTY DISTRICT ATTORNEY RICO: How does Mr.  
20 DeLuna, if he were to be paroled, if he were to be  
21 returned to Mexico, how does he intend to support  
22 himself in Mexico?

23 INMATE DELUNA THROUGH INTERPRETER:

24 (inaudible) is to help my parents take care of the  
25 animals, help them, and to continue with my program  
26 of Alcoholics Anonymous, and help.

27 DEPUTY DISTRICT ATTORNEY RICO: Okay. But

1 does Mr. DeLuna have a plan for making money?

2 INMATE DELUNA THROUGH INTERPRETER: Yes,

3 Sir. Plenty, beans and corn, (inaudible) can be  
4 planted over there also.

5 DEPUTY DISTRICT ATTORNEY RICO: Is Mr.  
6 DeLuna familiar with the 12 Steps?

7 INMATE DELUNA THROUGH INTERPRETER: I don't  
8 know them all but some.

9 DEPUTY DISTRICT ATTORNEY RICO: What's the  
10 most important Step to him?

11 INMATE DELUNA THROUGH INTERPRETER: Number  
12 eight.

13 DEPUTY DISTRICT ATTORNEY RICO: And what is  
14 that?

15 INMATE DELUNA THROUGH INTERPRETER: To  
16 admit, we made a list of all the people that we  
17 have injured.

18 DEPUTY DISTRICT ATTORNEY RICO: And has Mr.  
19 DeLuna done that?

20 INMATE DELUNA THROUGH INTERPRETER: I've  
21 been studying it.

22 DEPUTY DISTRICT ATTORNEY RICO: Who is at  
23 the top of his list?

24 INMATE DELUNA THROUGH INTERPRETER: You are.

25 DEPUTY DISTRICT ATTORNEY RICO: I don't  
26 quite understand.

27 PRESIDING COMMISSIONER ANGELE: Mr. DeLuna,

1 you made your list (inaudible).

2 **INMATE DELUNA THROUGH INTERPRETER:**

3 (Inaudible.) To accept the injuries that you've  
4 done to others.

5 **PRESIDING COMMISSIONER ANGELE:** The top, the  
6 top of the list, number one.

7 **INMATE DELUNA THROUGH INTERPRETER:** God.

8 **DEPUTY DISTRICT ATTORNEY RICO:** Thank you.

9 And I have nothing further.

10 **ATTORNEY TARDIFF:** No questions.

11 **PRESIDING COMMISSIONER ANGELE:** Closing,  
12 please, Mr. Rico.

13 **DEPUTY DISTRICT ATTORNEY RICO:** Thank you.

14 Well, --

15 **DEPUTY COMMISSIONER RODRIGUEZ:** Excuse me,  
16 counselor. I need to turn tapes over again.

17 [Thereupon, the tape was changed to tape two.]

18 **DEPUTY DISTRICT ATTORNEY RICO:** Thank you.

19 Again, I'll try to keep this as focused and brief  
20 as I can, but I read the recent Appellate Decision  
21 which mandates a new hearing, and I note that there  
22 are some references in that that talk about the  
23 crime in this case as not being, quote, "especially  
24 egregious when compared to other murders," unquote.  
25 And so I need to refer to this because I think it's  
26 important to have the record established just what  
27 is involved here in this life offense. The

1 probation report is in the file. There's been  
2 reference to it. Mr. DeLuna has (inaudible) to  
3 some aspects of it, but it looks like we have a  
4 situation where on the date of the offense, July  
5 7<sup>th</sup>, 1985, Mr. DeLuna, who today admits that he is  
6 an alcoholic and a drunk, started drinking early in  
7 the morning apparently while he was at work. He  
8 drank throughout the day, went home and drank, went  
9 to the flea market and continued drinking. And I  
10 think it's important to note that in spite of all  
11 this drinking, Mr. DeLuna still thought that it was  
12 all right for him to drive from one location to  
13 another, either from where he was working to home  
14 or from home back to the flea market and then from  
15 the flea market to the bar with his brother. And  
16 then the drinking continued at the bar, so it looks  
17 like a day, an entire daylong drinking episode.  
18 And then there's the altercation with the victim  
19 and the victim's friends, and it may very well be  
20 that the victim hit or somehow angered Mr. DeLuna.  
21 I note that in the probation report there was a  
22 reference -- Let me strike that at this point. But  
23 in the probation report it talks about the  
24 circumstances of the crime, and what Mr. DeLuna has  
25 said today has wandered a little bit from the  
26 circumstances reported in the probation report.  
27 But even under what he said today, it seems that

1 the altercation at the bar between Mr. DeLuna and  
2 victim took place and then Mr. DeLuna drove home  
3 where he swapped out vehicles and got his car which  
4 contained two firearms, a rifle and a shotgun, and  
5 then he returned to the bar. And it's a little  
6 equivocal as to why he returned at that point, if  
7 he was going to continue drinking or if there was  
8 some other motive. And looking at the psych  
9 report, the most recent one the 2001 at page four,  
10 what Mr. DeLuna apparently told the evaluator there  
11 is this, that Mr. DeLuna claimed that as the victim  
12 was hitting him at the bar he was trying to fend  
13 off the blows, Mr. DeLuna alleged the victim  
14 started cursing at him and then stated, you better  
15 leave or I'm going to kill you. Mr. DeLuna then  
16 indicated that he got in his truck, drove home, and  
17 became, quote, "very upset and angry, I lost all  
18 reasoning," unquote. Mr. DeLuna reported that he  
19 had a rifle in his car and he returned to  
20 Rosarita's. He denied having any intention of  
21 killing the victim. Mr. DeLuna claims that when he  
22 saw the victim in the parking lot, the victim  
23 started moving quickly towards his vehicle. Mr.  
24 DeLuna stated that he then pulled out his rifle and  
25 started shooting at the victim thinking that he was  
26 going for a firearm, although, he acknowledged he  
27 never had a firearm. Today, Mr. DeLuna is

1 indicating that he actually had the .12 or the  
2 shotgun, so I don't know if he's saying that he  
3 used both the rifle which inflicted the fatal  
4 wounds and the shotgun personally, or if he's  
5 trying to take some responsibility off his brother  
6 who apparently was in the car, and who he has never  
7 wanted to talk about there being a second shooter.  
8 But in any event, it is true that he has taken full  
9 responsibility for this crime. Today he indicates  
10 that he also shot at the vehicle, which apparently  
11 contained a mother and her daughter and a friend,  
12 thinking that it was other people. So we have an  
13 offense here that involved an altercation. What  
14 was extremely is that an altercation can take  
15 place. Alcohol can be involved. It's a fueling  
16 force quite often that precipitates violence. But  
17 here we have an individual that although he had  
18 been drinking heavily, nevertheless, he chooses to  
19 go home, arm himself with not one but two weapons,  
20 return with another individual in the car, and then  
21 the indications are from the report that, and Mr.  
22 DeLuna agreed with that a few minutes ago, that he  
23 returns and begins circling the victim, who is on  
24 foot while the defendant is driving his car. So  
25 the defendant is driving his car in a circle around  
26 the victim who's on foot, and the report indicates  
27 the defendant and his passenger were each observed

1 to be holding rifles or weapons. Mr. DeLuna hasn't  
2 owned up to the other passenger doing anything, but  
3 the bottom line is that there was a stalking  
4 involved here by Mr. DeLuna, who was driving his  
5 vehicle, following the victim who was on foot. And  
6 the victim was shot and struck in the elbow, and he  
7 fell bleeding, and then he got up and walked around  
8 to the other side of his car and yelled at Mr.  
9 DeLuna, go ahead and kill me, which was a poor  
10 choice of words, no doubt, on his part. And at  
11 that point, Mr. DeLuna fired another shot striking  
12 the victim in the face, and I note this is a rifle  
13 that is being fired. The victim because apparently  
14 the coroner indicates in the probation report that  
15 in addition to the superficial wound to the left  
16 elbow, there was a wound at a right angle to the  
17 mouth, so after the victim was shot the second time  
18 in the face at a right angle to the mouth, the  
19 victim continued upright walking around spitting  
20 blood and teeth fragments. But then he walked  
21 across the parking lot towards a stack of wooden  
22 boxes, and the defendant, Mr. DeLuna, tracked the  
23 victim in his vehicle and fired another shot which  
24 struck a gas pump in the vicinity. The victim  
25 continued to walk away along and among the wooden  
26 boxes calling for his brother. While the victim  
27 continued to wander around the parking lot in the

1 boxes, the defendant continued to pursue him in his  
2 car. The victim, at one point, ran between two  
3 stacks of boxes, and it was at this time that Mr.  
4 DeLuna shot him a third time in the back.

5 According to the coroner, that wound, the fatal  
6 wound, entered the right upper back and exited the  
7 left upper chest according to the probation report.

8 As a result of that wound, the victim suffered  
9 perforation of the right posterior chest wall, the  
10 aorta, the left lung, and the left chest wall. The  
11 victim, incidentally, was a .14 BA and therefore  
12 intoxicated and vulnerable himself in addition to  
13 being unarmed. The victim, even after being shot  
14 with this wound that would prove fatal, ran across  
15 the parking lot towards his vehicle and then to  
16 Rosarita's trying to gain entry, but the door was  
17 locked, and the victim collapsed on the porch, and  
18 the defendant fled the area. Now, it's at this  
19 time this defendant fled the area that apparently  
20 he encountered Ms. Nagy, N-A-G-Y, who had picked up  
21 her daughter and her daughter's friend at the  
22 Granada Theater and was driving southbound on Depot  
23 Street approaching Third Street. And as she  
24 crossed Third Street, she encountered the defendant  
25 fleeing in his vehicle. It made a turn in her path  
26 and caused her to stop abruptly. The white vehicle  
27 then turned facing her. It approached her from the

1 opposite direction and stopped and it came  
2 alongside her. She said she and the driver of the  
3 car, the defendant, made eye to eye contact, and  
4 she stated she could see the passenger and the  
5 defendant a rifle. She stated the defendant then  
6 pointed the rifle out of the driver's window of his  
7 vehicle and fired in her direction but missed her.  
8 She got his license plate number, and the car was  
9 subsequently traced to the defendant. Now, Mr.  
10 DeLuna has indicated that he just fired at this  
11 vehicle because he thought friends of the victim  
12 were in it. But according to the driver of the  
13 car, this is Nagy, she indicates that he was right  
14 alongside her, and they made eye to eye contact,  
15 and I submit that it's also reasonable to indicate  
16 that maybe this was just, there was a witness to  
17 him at that point which is why he fired at her. So  
18 when I read this Court of Appeal Opinion that talks  
19 about the reference to this not being a terribly  
20 egregious crime, what I'm seeing here are a  
21 continued course of criminality. And why was this  
22 done? Again, referring to the psych eval, in the  
23 psych eval at page four as I referred to before,  
24 Mr. DeLuna indicated that he was very upset and  
25 angry. Now, we have alcohol fueling this, but we  
26 have lack of impulse control. We have anger. We  
27 have planning and premeditation to go and acquire

1 the weapons, come back to the scene, wait, lie in  
2 wait, and then stalk the vulnerable victim. He was  
3 not deterred by shooting him once, twice, and a  
4 third fatal time but then fleeing the scene, he  
5 thinks it necessary to stop and fire at a woman  
6 with two younger people in the car as well, all the  
7 while, having driven for apparently some distance  
8 under a high state of intoxication in a car where  
9 he kept weapons as a matter of course to  
10 purportedly scare animals, whatever, I don't know  
11 how he intended to scare animals if he talked about  
12 shooting at them to scare them away or waving a gun  
13 at them. And how did Mr. DeLuna describe all of  
14 this initially? He said starting out at this  
15 hearing that he made an error, an error. He's  
16 talked about this before as an accident. This is  
17 so far and away above and beyond your garden  
18 variety second-degree murder with aspects of having  
19 an opportunity to cease and not taking advantage of  
20 it, even after he's fired one shot which was  
21 minimal, a second shot which was not fatal, but  
22 then engaging and continuing in this course of  
23 conduct is -- There's so much evidence here of a  
24 first. The only thing that would cut against it  
25 would be the alcohol. And back to the alcohol  
26 issue, what's troublesome is that when I look at  
27 the Board report Mr. DeLuna in his prisoner's

1 version at page two of the current Board report  
2 says that he'd been drinking all day and does not  
3 remember all of the details, but he's been pretty  
4 good with details today. As far as the psych  
5 report, I know we're having the Court ordered  
6 hearing, and the only, the most current psych eval  
7 available is October of 2001. That report is kind  
8 of a mixed bag here. First of all, it says in  
9 terms of substance abuse history that Mr. DeLuna is  
10 talking about, has talked about using alcohol,  
11 starting to use it at the age of 17, denying any  
12 use of illicit drugs. Initially, he informed the  
13 examiner that he consumed approximately one or two  
14 beers everyday and perhaps a six-pack on the  
15 weekends. Well, what he's indicated today is far  
16 and away above that usage on the day in question,  
17 and the evaluator in the psych report indicates, as  
18 the interview progressed, it became apparent that  
19 Mr. DeLuna's use of alcohol was likely much more  
20 extensive. And yet at that time, Mr. DeLuna denied  
21 having a problem with alcohol. So when it comes to  
22 conclusion in that evaluation, it talks about risk  
23 of violence, and it's hard to really consider this  
24 evaluation as reliable because it talks about the  
25 tests that were used, and it talks about the  
26 current research supporting an empirically based  
27 risk assessment, and it said that since Mr. DeLuna

1 is from a different cultural background, these  
2 instruments have, quote, "questionable validity,"  
3 unquote, and nevertheless, it puts him in the low  
4 range of severity, but then right away it follows  
5 it up by saying, however, these results need to be  
6 interpreted cautiously since these instruments have  
7 questionable validity for individuals from  
8 different cultures. It goes on to say that overall  
9 Mr. DeLuna appears to have a low level of risk, and  
10 the index offense appears to be an isolated  
11 incident. I'm not so sure that that's actually  
12 valid given the extent of the drinking. And it  
13 says, however, it should be noted that Mr. DeLuna  
14 appears to have a more serious problem with alcohol  
15 than he's acknowledging. I just believe that that  
16 problem hasn't truly been addressed here. Mr.  
17 DeLuna talks about the 12 Steps. He talks about,  
18 you know, continuing with his alcohol problem or  
19 program, alcohol program, excuse me. When asked  
20 about who he puts at the top of his list of people  
21 that he has offended or have been impacted by his  
22 alcoholism, he puts God there, and I understand the  
23 thought that he is perhaps indicating that he is  
24 repentant against God, but I don't really hear here  
25 remorse, coming to terms with the crime let alone  
26 that problem that has caused this whether it be  
27 alcohol, anger, pride for being hit by the victim

1 in the company of his brother and friend, but  
2 there's a lot of issues here that are still  
3 unresolved, that have not been addressed in a  
4 psychiatric evaluation, and I see no reasonable  
5 expectation that if Mr. DeLuna were to be released  
6 back into the free community one of his first stops  
7 wouldn't be back in a bar. I recognize that he is  
8 not apparently had any alcohol-related problems  
9 while he's in a controlled setting, but I don't  
10 believe that while he's incarcerated, I recognize  
11 counsel will probably say, well, it's easy to get  
12 alcohol behind bars, and that's true, but it is  
13 also far easier to abstain from alcohol in prison  
14 than it would be to avoid the temptation upon  
15 release. And if he intends to go back to Mexico,  
16 work at his parent's farm, again, work out farming  
17 in the hot environment, perhaps even hotter  
18 environment of Mexico which drove him to drink on  
19 the morning in question and throughout that day,  
20 that history wouldn't repeat itself. And if he  
21 gets out there, finds he's thirsty and starts  
22 drinking a beer and having further alcohol to relax  
23 later in the day and then goes out to a bar, maybe  
24 this would be a reoccurrence of a problem on the  
25 other side of the border, but it would still be a  
26 high likelihood of a reoffense if somebody crosses  
27 him or offends him or he again gets angry under the

1 influence of alcohol. So I think, all things  
2 considered, that Mr. DeLuna still needs to work not  
3 only on his parole plans because I didn't hear a  
4 real answer to making money. He's talking about  
5 being on the farm, and it sounds like maybe kind of  
6 being taken of by his parents. He's 50 years old,  
7 and I think that he needs to work more on his  
8 programming so that he can become self-sufficient  
9 and not lapse back into a situation which may cause  
10 him to reoffend. And I don't think there's been an  
11 adequate showing of remorse or coming to terms with  
12 the crime or evidence of positive change other than  
13 perhaps a recent acceptance on his part that he's a  
14 drunk. But when he repeatedly refers to it as an  
15 error or an accident and I haven't heard a lot of  
16 remorse, I don't see that there's been a  
17 significant change except for the fact that he's  
18 been incarcerated and forcibly kept away from  
19 alcohol. So all in all, I think that this crime  
20 which involves multiple victims, multiple  
21 criminality, that there seems to be an inability to  
22 curtail -- Was that, I heard a click. I wasn't  
23 sure if that was a tape. That in any event, Mr.  
24 DeLuna is not anywhere near suitable for parole.  
25 There is still issues that he needs to resolve, and  
26 I anticipate that it's going to take some time for  
27 him to do that. I would ask that he be found not

1 suitable at this time. It's true that he should be  
2 commended for certain things that he has done.  
3 He's working to not offend violently on the inside,  
4 and he's programming to some extent. And I  
5 recognize that there's a medical issue at this  
6 particular point, but hopefully, after the medical  
7 issues are favorably resolved, I would hope, that  
8 he can return to programming that is going to be  
9 intensely necessary for him before he can again  
10 become safe to the community outside the prison  
11 walls, and I would ask that he be found not  
12 suitable in a multi-year denial at this point.  
13 Thank you.

14 **PRESIDING COMMISSIONER ANGELE:** Ms. Tardiff,  
15 closing, please.

16 **ATTORNEY TARDIFF:** Thank you. In terms of  
17 the commitment offense, it is noted in the  
18 counselors' reports that there is a significant, I  
19 argue, mitigating factor in that he had no prior  
20 criminal history at all. Further in the '01 and  
21 the '98 psych eval, they both make a point of  
22 stating that Mr. DeLuna was remorseful for this  
23 commitment offense. He has always admitted  
24 culpability from the time that the crime occurred,  
25 and he at an early stage of the proceedings, I  
argue, he came clean on this which should also be  
27 another mitigating factor. In terms of his

1 preconviction history, his social history, and this  
2 is also pointed out in the Court of Appeals  
3 Decision, is in fact stable. He came from an  
4 intact, large, close knit family. He worked the  
5 family farm. He maintained steady work employment  
6 after coming to the United States, and again, he  
7 had no prior criminal history. In terms of his  
8 alcohol abuse, the Court of Appeals notes that  
9 there was no evidence that this abuse contributed  
10 to a history of unstable or tumultuous  
11 relationships. And in terms of the issue of the  
12 gun, the Court of Appeals pointed out that there  
13 was conflicting evidence; therefore, it was  
14 insufficient to even amount to some evidence. The  
15 fact that he had a limited education at the time of  
16 the commitment offense does not amount to making  
17 him have an unstable social history as well and  
18 should not in fact be used against him. Mr.  
19 DeLuna's institutional behavior has been supportive  
20 of release. He has participated in beneficial  
21 self-help, most recently the Impact Program,  
22 Personal Growth Seminars, and AA. He hasn't had  
23 any 115s and only two 128s, excellent discipline  
24 history. He has tried to upgrade educationally,  
25 has not obtained his GED, but the Court of Appeals,  
26 again, notes that there doesn't seem to be any  
27 connection between a lack of education and or lack

1 of proficiency in the English language to show that  
2 his institutional behavior has not been positive.  
3 His most recent psych eval of 8/01, and this is  
4 based on the testing procedures, notes that he  
5 scored well within the low range of severity. I  
6 know there's a caveat regarding the use of alcohol,  
7 and perhaps Mr. DeLuna's denial at that time or  
8 minimizing it, I think today he's cleared that up  
9 in stating that he is in fact an alcoholic and that  
10 he intends to continue participation in AA upon  
11 release. He has no mental health disorder.  
12 Further, the psych eval states that this incident  
13 that occurred was an isolated incident related to  
14 intense situational factors and the disinhibiting  
15 affect of alcohol intoxication. Therefore, it's  
16 unlikely that this same set of events would occur  
17 again and that this would result again. Therefore,  
18 he poses, does not pose an unreasonable risk of  
19 danger to others. His parole plans are, I submit,  
20 sufficiently solid. He has strong family support.  
21 He will be working on the family farm, and with  
22 that, I will submit it. Thank you.

23 **PRESIDING COMMISSIONER ANGELE:** Thank you.  
24 Now, Mr. DeLuna, you have a chance now to tell this  
25 Panel, if you wish, why you believe you are  
26 suitable for parole, or he can let the hearing end  
27 on what the attorney has said on his behalf.

1                   **INMATE DELUNA THROUGH INTERPRETER:** I'll  
2 leave it with what the attorney said.

3                   **PRESIDING COMMISSIONER ANGELE:** Thank you.

4 We're going to recess for deliberations. The time  
5 is approximately 5:25 p.m.

6                   **R E C E S S**

7                   **--o0o--**

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1 CALIFORNIA BOARD OF PRISON TERMS

2 D E C I S I O N

3 DEPUTY COMMISSIONER RODRIGUEZ: Okay. We're  
4 back on record. All parties have returned.

5 PRESIDING COMMISSIONER ANGELE: This is in  
6 the matter of Isidoro DeLuna, CDC number D David  
7 16017. The time is approximately 6:00; excuse me,  
8 5:50 p.m. Mr. DeLuna, the Panel has reviewed all  
9 information received from the public and relied on  
10 the following circumstances in that you're not  
11 suitable for parole and would pose an unreasonable  
12 risk of danger to society or a threat to public  
13 safety. Of course, we have the instant offense  
14 that was carried out in a violent and brutal  
15 manner. There were multiple victims. One was  
16 killed. The offense was carried out in a manner  
17 which demonstrates a disregard for human life and  
18 for public safety. And the conclusions were drawn  
19 from the Statement of Fact wherein the inmate on or  
20 about the 11<sup>th</sup> day of December, 1974, after being  
21 involved, excuse me, I'm sorry, that's July the  
22 7<sup>th</sup>, 1985, excuse me, after being involved in a  
23 verbal and then physical altercation with the  
24 victim, one Fernando Rentorio, this is at a local  
25 bar, restaurant, the inmate who had been drinking  
26 all day drove the vehicle that he was in, a truck,  
27 ISIDORO DELUNA D-16017. DECISION PAGE 1 4/27/05

1 to his residence, changed into his own vehicle  
2 which contained two weapons, a shotgun and a .22  
3 caliber rifle, and drove back to the bar after  
4 having a couple of drinks at home. He said he was  
5 going back to the bar and restaurant to drink. He  
6 confronted Mr. Rentorio, and as a result, he shot  
7 and killed the victim. He shot the victim once in  
8 the back as he was trying to flee after shooting  
9 him two other times, once in the face, and upon  
10 leaving the scene did fire a weapon at a vehicle  
11 containing a noninvolved party, a female with  
12 children in the vehicle. The inmate claims he was  
13 drunk during the offense and does not remember  
14 parts of it; however, intoxication was a big part  
15 of this crime, and the inmate states that he  
16 committed this crime because of the altercation  
17 that occurred at the restaurant, bar prior to him  
18 driving the truck to his residence. The inmate has  
19 no prior criminal history. Due to his being  
20 medically unassigned, he has not been able to  
21 program. He's not been able to be involved in a  
22 marketable skill, and he's not been able to  
23 participate in self-help while at this institution.  
24 He has been 115 free during his total term of  
25 incarceration receiving only two 128(a) counseling  
26 chronos the last one being on February, excuse me,  
27 **ISIDORO DELUNA D-16017 DECISION PAGE 2 4/27/05**

1 April 25<sup>th</sup>, 2004, for delaying count. The  
2 psychological evaluation is interesting in that the  
3 inmate today admits to being in his own words, a  
4 drunk and an alcoholic. In the psychological  
5 evaluation dated 8/30/01, that's the latest full  
6 evaluation by Dr. Eric Rueschenberg,  
7 R-U-E-S-C-H-E-N-B-E-R-G, PhD.

8 "The risk for future violence in the  
9 community was estimated using three  
10 psychological instruments. The  
11 current research supports an  
12 empirically based risk assessment as  
13 being the most reliable and valid  
14 procedure for assessing risk for  
15 violence. It should be noted that  
16 since Mr. DeLuna is from a different  
17 cultural background these instruments  
18 have questionable validity. The  
19 three psychological instruments were  
20 the HARE Scale, PCL-R, the History  
21 Clinical Risk 20, HCR20, and the  
22 Violence Risk Appraisal Guide, VRAG.  
23 Collectively, these instruments  
24 assessed static risk factors and  
25 (inaudible) factors and actuarial  
26 factors associated with future risk

1 for violence. On the three measures,  
2 Mr. DeLuna scored well within the low  
3 range of severity; however, as  
4 mentioned above, the results need to  
5 be interpreted cautiously since these  
6 instruments have questionable  
7 validity for individuals from  
8 different cultures. Conclusion,  
9 overall, Mr. DeLuna appears to have a  
10 low level of risk for violence,  
11 future violence, in the community.  
12 The index offense seems to be an  
13 isolated incident related to intense  
14 situational factors and the  
15 disinhibiting affect of alcoholic  
16 intoxication. However, it should be  
17 noted that Mr. DeLuna appears to have  
18 had a more serious problem with  
19 alcohol than he's acknowledging. His  
20 ability to maintain behavioral  
21 control is indicated by the fact that  
22 he has not received any CDC 115  
23 disciplinary reports while  
24 incarcerated in prison. If Mr.  
25 DeLuna is to remain in prison, it is  
26 recommended that he continue to

1 remain disciplinary-free, that he  
2 improve his English skills, and that  
3 he participate in AA."

4 I want to emphasize once again that the inmate  
5 today very clearly indicated that he believes he is  
6 a drunk and alcoholic. That is something that  
7 hopefully the new psychological evaluation will  
8 clear up when it is done. The inmate does seem to  
9 have parole plans not in California but in  
10 Minnesota, and he also plans to go back to Mexico.  
11 He does have an INS Hold against him, living at a  
12 family farm where he'll be planting different crops  
13 and that the farm would appear to be with him  
14 staying with the family. The Hearing Panel notes  
15 that in response to 3042 Notices indicating an  
16 opposition to a finding of parole suitability,  
17 specifically, the District Attorney of Santa Clara  
18 County was present by way of video conference  
19 voiced opposition to parole suitability. The  
20 inmate should be commended for having no 115s  
21 during his incarceration, for being involved to the  
22 degree that he has been involved in in self-help  
23 programs, for being involved in ESL, and also for  
24 obtaining two certificates in vocational  
25 landscaping. However, these positive aspects of  
26 his behavior do not outweigh the factors of

1 unsuitability. I want to add that the inmate needs  
2 additional time in order to fully understand and  
3 deal with the consequences of his act. The denial  
4 is for a period of one year. During that year we  
5 ask that you remain disciplinary-free, if available  
6 once he is no longer medically unassigned, get  
7 involved in self-help, and also to cooperate with  
8 clinicians in the completion of a clinical  
9 evaluation, specifically, to talk about insight in  
10 the inmate's alcohol abuse. I'm going to ask that  
11 a new psychological evaluation be conducted, and I  
12 want the record to be clear that this has to do  
13 with the inmate's today clearly admitting to his  
14 being alcoholic and a drunk, and also I think it's  
15 obvious today that the inmate had a severe language  
16 problem due to his Spanish, and even with an  
17 interpreter, even with an interpreter, has a hard  
18 time explaining himself. For example, using words  
19 like hit and throw, or hitting and throwing, to  
20 describe shooting at the victim. He also appears  
21 to get flustered when unable to fully explain  
22 himself, and some statements get lost even in the  
23 interpretation. It is clear to this Panel that  
24 some of the statements that the inmate makes from  
25 the statements that he may give are because of  
26 cultural ramifications, language barrier, and him  
27 **ISIDORO DELUNA D-16017 DECISION PAGE 6 4/27/05**

1 attempting to describe things in words that are not  
2 usually used to describe them which is not meant to  
3 say it is sounding bad on his part. It is meant to  
4 say that merely there is a situation involved in  
5 this particular case that he uses different wording  
6 and sometimes those wordings may put him in a box,  
7 so to speak, meaning he gets stuck in a spot where  
8 people assume he says something and means something  
9 when he doesn't really mean that. Does he  
10 understand what I'm trying to say? It is not meant  
11 to be negative.

12 **INMATE DELUNA THROUGH INTERPRETER:** No.

13 That's fine.

14 **PRESIDING COMMISSIONER ANGELE:** Any  
15 comments, Commissioner Rodriguez?

16 **DEPUTY COMMISSIONER RODRIGUEZ:** I concur  
17 with Commissioner Angele. Good luck, sir.

18 **PRESIDING COMMISSIONER ANGELE:** That does  
19 conclude this hearing. The time is approximately  
20 6:00 p.m., and I wish you the best of luck, sir.

21 --oo--

22  
23 **PAROLE DENIED ONE YEAR**

24 **THIS DECISION WILL BE FINAL ON:** AUG 25 2005

25 **YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT**  
26 **DATE, THE DECISION IS MODIFIED.**

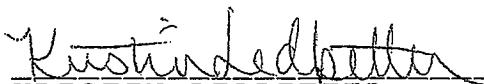
27 **ISIDORO DELUNA D-16017 DECISION PAGE 7 4/27/05**

CERTIFICATE AND  
DECLARATION OF TRANSCRIBER

I, KRISTIN LEDBETTER, a duly designated transcriber, CAPITOL ELECTRONIC REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total two in number and cover a total of pages numbered 1 through 82, and which recording was duly recorded at CALIFORNIA MEN'S COLONY, at SAN LUIS OBISPO, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of ISIDORO DELUNA, CDC No. D-16017, on APRIL 27, 2005, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability.

I hereby certify that I am a disinterested party in the above-captioned matter and have no interest in the outcome of the hearing.

Dated MAY 14, 2005, at Sacramento County, California.

  
KRISTIN LEDBETTER  
Transcriber  
CAPITOL ELECTRONIC REPORTING